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CONTENTS

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THE MEANING AND METHOD OF SCIENCE

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Professor Giddings says, "The scientific study of society is sociology." Blackmar and Gillin define sociology as "The science which investigates the regularities of human experience in all its varied aspects." Professor Hayes speaks of it as "The farthest step toward the applications of the method of science to the investigation of life itself." Park and Burgess say, "Sociology as Comte conceived it is a fundamental science, i.e., a method of investigation and a body of discoveries about mankind." Still others define it as "The scientific study of society," "The science of society," "The science of social phenomena," "The science of the social process," "The scientific study of men in their group relations," "The science of social relations," "The science which deals with human association, its origin, development, forms, and functions."

In all of these phrases there is full agreement and uniformity of statement on one point—all agree that sociology is a science and unite in defining it as such. Some tell us what they mean by science. Others leave the reader to interpret the term in the light of his own or current conceptions of the word. Writers have differed widely concerning the subject-matter or materials of sociology. The boundaries especially between the social sciences have not been clearly established and it is perhaps futile and even unnecessary to draw hard and fast lines between them. In

the last analysis, as we shall see, all science is one in method and there will always be overlapping in the use of materials, each of the specific sciences using many of the same facts and data for the solutions of its particular problems. No one science—if such exists—has a corner on and the sole claim to any facts within the range of human knowledge. Hence the specific sciences may be differentiated from each other more satisfactorily by the problems which each seeks to solve, the laws which each undertakes to formulate, and the particular techniques by which each seeks to apply the general method of science in the analysis of the relevant material. In doing this each must use the same general scientific method and much of the same material in the application of its particular techniques.

Much of the confusion of thought in the popular mind and that of the beginning student concerning sociology is due to a failure fully to apprehend the meaning and significance of the nature and method of science. They are told that sociology is a science but are not told what science is. Hence this chapter is devoted to a consideration of such fundamental elements of science in general as are necessary to the mastery of any science in particular. This is justified by the fact that few students on beginning the study of sociology have had previous opportunity to become oriented into the meaning, method, point of view and attitudes of scientific study. Even those students who specialize in the so-called natural sciences often do not gain a clear grasp of these essentials until they are well along in their studies; while those who do not so specialize know next to nothing about them. That this knowledge is essential to any real understanding of sociology should be recognized by the student at the outset. Professor F. S. Chapin stated this idea clearly when he said:

> Many college students in social research and in social statistics flounder about quite unbeknown to the instructor between the vague generalities, on the one hand, which figures are presented to substantiate, and a mass of concrete numerical facts which seem unrelated and indigestible, on the other. To steer his way through this maze of principles and facts the student needs a compass

> and a plan. My experience has demonstrated the usefulness of a formation of the principles of the inductive method at the very beginning of the course in connection with concrete problems, a formulation which can be frequently harked back to whenever a complicated problem has confused the student and he has for the time being lost his bearings. In this way the student discovers at the outset that scientific procedure in the study of any social problem, whether that study take the form of a social survey or the form of a statistical analysis, is always and only the application of the inductive method of research.[1]

It is the purpose of this chapter to give the student such a "compass and plan"; not only to enable him to chart his way through this and subsequent courses in college, but also to serve as a guide in the complex social problems of life which he must inevitably face. Frequent returns should therefore be made to the chapter and the principles here outlined should often be reconsidered in the light of the subsequent materials of the course. The full significance of these principles may not be entirely apprehended at the outset, but their value will become more apparent as greater skill in the use of "the compass" is acquired.

Definitions

A. Science

Body of Knowledge.—A science is ordinarily defined as a body of organized, systematized knowledge relative to any particular field of human thought; while science in general is regarded as the total of such organized knowledge viewed as a whole. The work itself means "knowledge", but in modern use it usually denotes knowledge which has been reduced to definite system and orderly arrangement. Some authors go so far as to insist that all knowledge itself is science. For instance, Lester F. Ward says, "The only thing that can develop or strengthen the faculties of the mind is knowledge and all real knowledge is science."[2] But what does Mr. Ward mean by the word "real?" Can there

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[1] *Proceedings of the American Sociological Society*, Vol. XVII, pp. 186-7.

[2] Ward, L. F., *Applied Sociology*, 312.

be such a thing as "unreal" knowledge? It seems to have the content of a refined type of knowledge. Usually such contentions are based upon a conception of knowledge as essentially orderly and systematic. This is equivalent to saying that no knowledge, or what purports to be knowledge, is knowledge unless it is scientific—which is only reasoning in a circle and gets nowhere. It is, however, permissible thus to define science, provided the definition is not allowed to obscure the method which underlies and is essential to the ordering of any body of knowledge in the scientific sense. This is a necessary view of science and one which by no means should be abandoned.

It should perhaps be said at this point that there are some who conceive any orderly arrangement of knowledge apart from consideration of its validity, sources, or methods of acquisition as science. In other words, the mere organization of information into some sort of a system is regarded by them as science. For example, the systematizing of that type of knowledge considered by Christian theologians as Revealed knowledge is called by them a science regardless of the fact that such is not considered to have been obtained by the methods of scientific research or discovery, or to be subject to scientific verification. True science in the full meaning of the term is more than a mere organization of knowledge. It also involves a particular sort of organization based upon specific methods by which it was discovered.

In defining science as a body of knowledge several difficulties are encountered. There is no standard of measurement by which to judge when a study has reached the degree of organization and systematization to entitle it to be called a science. On every college campus may be found those who contend that mathematics or astronomy or chemistry or some other favorite study is a science while others are not so. This contention is based upon the idea that the particular science favored has reached a higher stage of organization than others. This may be true, but it only

proves that in so defining a science no adequate standard of measurement has yet been found.

A second difficulty is met when the size or volume of the body of knowledge is considered. Some desire entrance into the hierarchy of sciences on the basis of the greatness of the amount or mass of knowledge which has been accumulated with reference to a subject. Here also no standard is to be found. No learned society or authoritative council has yet been able to say just how much must be known about any subject before that knowledge is entitled to classification as a science.

A third difficulty is found in the fact that in the last analysis no science is complete. The very genius of the scientific method and attitude is to hold no conclusion absolute or final. The bodies of knowledge called the particular sciences are only relatively complete. No one of them has ended its investigation nor ceased adding to its fund of knowledge. Here again no standard has been established by which to judge a study as to its right to scientific classification. If finality or completeness be the criterion, no science has yet measured up to it and each must be judged only on the basis of its proportionate approach thereto.

A fourth difficulty is found in the fact that age is often considered a criterion for the recognition of a study as a science. Some studies are older than others and have been applying the method of science in organizing their data into bodies of knowledge longer than others. The social sciences have been the last to develop. In a small town in a Central Western State, the older settlers regard everyone who has come into the town within the past thirty years a "newcomer"; and, hence, not entitled to the social recognition accorded to the older families. It is so in the community of sciences. The older ones seem reluctant at times to accord the new a place in their full fellowship. But so far, no one seems to be able to say just how old a study must be before it is to be called a science. There is no basis upon which a just judgment may be made. In fact the exact method of science is relatively young itself and many studies are old in

name only, having existed in the pre-scientific age in other than their present form. Modern science in the wider development and application of its exact method is little over one hundred years old. Alchemy has been superseded by chemistry; astrology by astronomy and random social thinking by sociology within the last hundred years.

The fifth difficulty, also not expressed in the definition, but often encountered in discussions based upon it, is relative degrees of importance. Claims are made for some studies for higher recognition than others on the ground that they are more important. Important for what? It is obvious that importance is determined by the object sought and varies with the different ages of history and with different individuals and groups and the changing circumstances. All teachers are prone to be ego-centric and to think that the study about which they know the most is the most important to be known by the student. To determine which is the most important for human progress is not necessary here. It certainly should have no bearing in determining whether a certain body of knowledge is to be accorded recognition as a science. If the objective of education be defined in terms of preparation for life, through progressive participation in life, which is coming more and more to be the case, certain studies, hitherto high in the college curriculum must take an humbler position or be retired altogether.

A sixth difficulty is practical and pedagogical. To define science as a body of knowledge is to impress the student with the idea that his fundamental task is to learn a certain group of facts and theories which go to make up a science. This becomes to him the goal of his efforts. What the textbook says is accepted without critical thought. He becomes a slave to authorities. He knows only because someone whom he believes certifies to the truthfulness of certain data. He does not get the idea that he is to find out the facts for himself. Too often, he thinks himself a scientist when he only knows what scientists have discovered. Necessary as this knowledge is, it does not make of one a real

scientist. For the real scientist is one who is utilizing the methods of discovery and proof of science to learn and verify the conclusions for himself and to discover even hitherto unknown truths.

A study is made scentific solely neither by its relative importance, its age, its size, nor its degree of systematization. There are, to say the least, bodies of thought, if not knowledge in the strict sense of the term, which make no claim to scientific recognition. Philosophy is such. It is organized, is of respectable dimensions and contains truth of great age and importance, but in the strict sense of the term is not science. History is such. We may have a science of history, but history itself as a body of knowledge as will be shown is not science. Revelation, as divinely communicated thought may be considered a body of knowledge, but is not science. Its organization into a body of dogmas and theological tenets has often been called a science, but strictly speaking is not so. Such studies should be termed non-scientific rather than unscientific. How then shall science be defined? In terms of a body of knowledge? Yes, but that is only half of the story.

A Method of Discovery.—To define science as a body of knowledge is to define it in terms of achievement—the product of a method of discovery. To define it in terms of organized knowledge is to imply the method by which its data are organized and without which no study is entitled to consideration as a science. To view science as a method of acquiring and organizing knowledge greatly simplifies the problem of definition. Professor Karl Pearson in his "Grammar of Science" stated this admirably when he said:

> The field of science is unlimited; its material is endless, every group of natural phenomena, every phase of social life, every stage of past or present development is material for science. *The unity of all science consists alone in its method, not in its material.* The man who classifies facts of any kind whatever, who sees their mutual relation and describes their sequences, is applying the scientific method and is a man of science. The facts may belong to the past history of mankind, to the social statistics of our great cities, to the atmosphere of the most distant stars, to the digestive organs of a worm, or to the life of a

scarcely visible bacillus. It is not facts themselves which make science, but the method by which they are dealt with.[3]

Mr. Curtis also states the idea correctly:

Natural science is the discovery and systematization of facts whose basis is sense-impressions. Generalizations consist in the interpretations we put upon our past and present experience with sense impressions. A science that consisted of disjointed sense-impressions would be one of unrelated facts, whereas true science consists in the putting of simple facts together and obtaining facts of a more complex nature or generalizations. This point of view does not imply that science is merely a static organization of knowledge, although the accumulated facts of science may be so regarded. Like an organism, science is *something happening*. It is a process of finding out the relationship and the order of phenomena in nature.[4]

And Professor Edman, following a previous definition of science in terms of a body of knowledge, also says:

Thus science as an activity is marked off by its method and its intent rather than by its subject-matter. As a method it is characterized by thoroughness, persistency, completeness, generality, and system. As regards its intent, it is characterized by its freedom from partiality or prejudice, and its interest in discovering what the facts are, apart from personal expectations and desires.[5]

It is very difficult to differentiate individual sciences by their particular materials. For purposes of convenience this may be done in the pure stage of a science, but in its applied stages the combined results of several sciences are more ordinarily utilized. For example, photography is a combination of the laws of physics and chemistry. However, we will doubtless continue to divide science into particular sciences by classifying them according to their major use of different types of phenomena. We will continue to speak of those studies which deal with physical and material phenomena as physical sciences. It has been a general custom incorrectly to call these the "natural" sciences, but natural is not a suitable word because it implies that those sciences from which it is set apart are unnatural, or deal

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[3]Pearson, Karl, *Grammar of Science*, 12.

[4]Curtis, W. C., *Science and Human Affairs*, p. 226.

[5]Edman, Irwin, *Human Traits*, p. 369.

with unnatural phenomena. All phenomena, whether physical, psychical, or social are natural. It is better, therefore, to think of science in terms of the physical and the non-physical or the social. But neither this division, nor any other, should be allowed to obscure the fact stated by Mr. Pearson that that which constitutes the unity of all sciences is its method. It is the method, and only the method, which is common to all studies called scientific. Hence, to define science as a method is to conform to the actual facts and to a fuller meaning of the whole situation, than merely to define it as a body of knowledge.

It follows that knowledge not obtained by means of this method, while it may be valid and trustworthy, is non-scientific knowledge. This is not saying anything new, nor is it imposing a new condition of classifying sciences. Already those who define science solely in terms of a "body of organized knowledge" have consciously or unconsciously based their definition upon a conception of the method of which the body is the product. Their insistence that the "body" be "ordered" or "systematized" knowledge is evidence of this, for order and system are predicated upon method. It is important for the student to recognize this fact.

It also follows that any study which is faithfully applying the recognized methods of science in its research is entitled to recognition as a science. The elements which constitute this scientific method have become fairly well established in the world of scholarship. Differences of opinion sometimes exist relative to the techniques by which the general method is applied. Some scientists confuse the techniques of their science with the general method of science and seek to impose their particular technique upon the general method. But on the whole this is not done and those studies which use the general method are accorded scientific recognition.

> Now although science has thus sprung from an attitude towards environment, it is but one of many attitudes which have had a common origin with it and with which it has often been in conflict. For although man sought explanations of the happenings of the outside world he was often satisfied with many to which we

should not apply the term scientific. He invested his surroundings with the attributes of his own being, often with attributes possessing an omnipotence to which he himself could only attain in imagination. By attributing to these personifications good and evil intentions towards himself he explained the occurrence of favorable and unfavorable events in nature, and by systems of supplications and sacrifices he sought to win the favor of the one and propitiate the wrath of the other. However it may have arisen, whether or not in some such attitude towards nature as this, there emerged the religious attitude and, still more difficult to explain, there arose also the aesthetic attitude. How then is science, distinguished from these other modes of approaching nature? The answer is found in its method, for to define the method of science is to define science itself. The mystical and aesthetic appreciations of nature are *intuitive and personal;* science is analytical and communicable from one person to another through the logical machinery of the normal human mind. Intuition is truer in the sense of being less removed from perception; science is abstract.[6]

As Professor Chapin says in a previous quotation the "Scientific procedure . . . is always and only the application of the inductive method of research." Inductive reasoning is the establishing of general conclusions based upon particular facts. It is reasoning from the particular to the general. Deductive reasoning is the reverse. It establishes the truth of a particular fact from its relation to a general conclusion. Its chief fallacy is in the acceptance of the general conclusion without adequate proof of its validity. The scientific method is correctly identified by Professor Chapin with the inductive method. The first task of science is the establishment of general conclusions or laws. When this has been done, the deductive method may be used with profit in predicting future occurrences and conditions based upon the general law. It is evident that deductive conclusions can be no stronger than the inductive generalizations upon which they are based.

B. SCIENTIFIC FACTS

The most common synoym for the term "Scientific Facts"

[6]Woodger, J. H., *Elementary Morphology and Physiology*, p. 528.

is the word "phenomena" or its singular form "phenomenon." Science is said to deal only with phenomena. But what is the meaning of this word? It is from a Greek word in its participial form and means that which is brought to light, is seen or is made to appear; that which is made clear, which is known or is knowable. It is often used in the Greek in these senses and also with such meanings as to lay bare, to uncover, to disclose. In its Anglicized form it has retained its original meaning; but it has been also broadened to include not only those things which appear to the visible eye of man and the other physical senses but also all those things which come within the view of the mind's eye. In other words, whatever may be apprehended by the human mind through sense perception or the process of abstract reasoning is considered as the material, the data or the facts of science,—its phenomena. That which is beyond the pale of the human mind, that which man cannot attain by his own mental efforts does not belong within the field of science. Herein may be found such things as the existence, the nature, the personality of God and His relation to man. Science, or in other words man's reason, is wholly unable to ascertain the First or the Final Causes, nor is it its province to do so. "The right of science to deal with the beyond of sense-impressions is not the subject of contest," says Mr. Pearson, "for science confessedly claims no such right."[7] Science is limited, therefore, to the realm of the "Knowable" and the knowable in the sense of and by the method of science.

The student should beware of the popular use of the term expressed by the adjective phenomenal, as, "The man performed a phenomenal feat," or "He had a phenomenal memory." The use of the term in these and similar expressions in the sense of the marvelous, wonderful, the out-of-the-ordinary is far from the meaning it has in science. Scientific phenomena are the ordinary rather than the extraordinary appearance of things.

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[7]Pearson, *Op. cit.*, 110.

Science is still further limited in its scope. It is limited not only to those things which come within the purview of man's experience, but also to certain types of phenomena in that experience. It deals only with those things, events, or happenings which occur or are repeated. It is not interested in the unique, isolated, single occurrence or thing. Its facts must be general. For example, I observe a bird building its nest. I note the materials it uses and the final form which it gives to the nest. To me this is a fact of knowledge. I know that a specific bird on a certain day built a nest of a particular sort. But such knowledge has no meaning for science. It cannot possibly furnish a basis upon which to establish any law that all birds of this species build their nests in this way. It is a unique fact. A large proportion of our common knowledge never passes beyond this stage of uniqueness. We observe on two or three occasions that certain things appear together and are prone to jump to the conclusion that the combination invariably occurs. Belief in luck and superstition are founded upon such random observation. That tall men marry short women and vice versa is a rather wide-spread belief of this sort which has no foundation in fact.

Furthermore, I may observe many hundreds of these same birds in their nest building enterprise and reach a general conclusion thoroughly satisfactory to myself. It still, however, is not scientific. It is only my private interpretation of what I have seen. To be valid for science it must be checked up by other men and other normal minds must confirm my conclusion. Science is a social creation. It is not of private interpretation. The conclusions of one man are not science until confirmed by others.

To be scientific, therefore, a fact must often occur, must furnish a basis for generalization and must impress all normally constituted human minds in the same way. In discussing unique facts, Professors Park and Burgess have very ably presented the chief difference between history and science.

Every historical fact, it is pointed out, is concerned with a unique event. History never repeats itself. If nothing else, the mere circumstance that every event has a *date* and a *location* would give historical facts an individuality that facts of the abstract sciences do not possess. Because historical facts always are located and dated, and cannot therefore be repeated they are not subject to experiment and verification. On the other hand, a fact not subject to verification is not a fact of natural science. History, as distinguished from natural history, deals with individuals, i.e., individual events, persons, institutions. Natural science is concerned, not with individuals, but with classes, types, species. All the assertions that are valid for natural science concern classes.[8]

Also in quoting Windelband they say:

The distinction between natural science and history begins at the point where we seek to convert facts into knowledge. Here again we observe that the one (natural science) seeks to formulate laws, the other (history) to portray events. In one case thought proceeds from the description of particulars to the general relations. In the other case it clings to a genial depiction of the individual object or event. For the natural scientist the object of investigation which cannot be repeated never has, as such, scientific value. It serves his purpose only so far as it may be regarded as a type or a special instance of a class from which the type may be deduced. The natural scientist considers the single case only so far as he can see in it the features which serve to throw light upon a general law. For the historian the problem is to revive and call up into the present, in all its particularity, an event in the past. His aim is to do for an actual event precisely what the artist seeks to do for the object of his imagination. It is just here that we discern the kinship between history and art, between the historian and the writer of literature. It is for this reason that natural science emphasized the abstract; the historian, on the other hand, is interested mainly in the concrete.[9]

In objecting to this view, Professor Case says:

Such a private, or at least special, interpretation is met in the reasonings of those who propose to use the word *science* to indicate only those branches of study which seek primarily to arrive at abstract generalization, laws, and principles.

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[8]Park and Burgess, *Introduction to the Science of Socoiology*, pp. 6 and 8.

[9]*Idem.*

What is science other than this? Has it any other aim or function? He further says:

> This dictinction is very ably elaborated in their *Introduction to the Science of Sociology*, by Park and Burgess (Ch. I) and it is there especially accredited to the German historian of philosophy, Wilhelm Windelband. But while the authors named are plainly distinguishing between history and *natural* science, others are less discriminating, so that one can trace in current discussion a tendency to blur this clear and valid distinction between history and *natural* science, by substituting the term *science* in general for *natural* science, and thus making it appear that the historical studies (history proper, archaelogy, anthropology, ethnology, etc.) are themselves worthy and fruitful branches of science itself.[10]
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> In such academic disputations it is apparent that science means merely that field of investigation whose methods and data measure up to some standard of thoroughness held by the particular speaker in question. Furthermore, it is evident that the standard is one of *quantitative* exactness, as measured by the facility with which the generalizations of the science under consideration can be expressed in mathematical terms. This contains a measure of truth, but may easily be exaggerated, while it becomes an absurdity when mathematics itself is made to appear, in any sense, the supreme, if not the only, science. For the truth is that mathematics is not a science at all, as Lester F. Ward long ago showed with unanswerable clearness. The student of mathematics does not, as mathematician, *know* anything whatsoever about the world of concrete reality. This is true because mathematics is not a body of knowledge with respect to any order of phenomena in the objective world. It deals with *concepts*, and is a kind of quanitative logic, purely subjective in its essential nature. But this is not to say that it is not an immensely valuable discipline. Quite the contrary. While one who knew *only* mathematics, even if he mastered it all, would know nothing about the objective, phenomenal world, he would be in command of an incomparable mental equipment for the accurate explanation of natural phenomena if he were to turn his mathematically disciplined mind to their systematic investigation. Thus it is that pure mathematics, far from being the one single science, is no science at all. It is, however, the measure of accuracy for all sciences, or the "standard of positivity," as Comte expressed it.

Professor Curtis, in discussing this general nature of

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[10]Case, C. M., *Outlines of Introductory Sociology*, XVI and XVII.

scientific facts, has pointed out the difference between coincident and natural law.

> To pursue the matter further, the difference between a coincidence and a law of nature is perhaps not so fundamental as is supposed. In the case of coincidence, there is an association of phenomena sufficiently unusual to attract attention. In the case of scientific law, we have seen certain phenomena associated so frequently or in such definite relationship that we have been led to assume their invariable association in the future. There is no necessity for the continuance of a given association beyond the fact that it has always been so observed or that the definiteness of the relationship makes even a single case appear conclusive. Thus, if you saw a red-headed man on a white horse you would think nothing of the circumstance. If you saw another such combination a block further on, you might notice the coincidence. If you saw one at every corner, you would begin to suspect that it was not a mere coincidence but a constant relationship. If you had never seen white horses without red-haired men on their backs and always at street intersections, you would have elevated this grouping of related phenomena to the level of a fact, established by scientific observation and to be expected in the future, just as one expects present-day birds to have feathers and beaks. When so formulated as to state its assumed occurrence for the past, present, and future, such a fact or group of facts would become a law of science.[11]

C. SCIENTIFIC LAW

Another term which requires definition for proper understanding of science is the term "law." Incidental references have already been made to the term but it needs further consideration. The idea of law as legislation, which is so deeply rooted in the popular mind makes it exceedingly difficult for the average person to understand law in the scientific sense. It would be better if we did not have to use the term at all in science. But no substitute for it has been found. Mr. Pearson says:

> Accordingly in my first chapter, in order to keep clear of the double sense of the word law, I endeavored to replace it when used in the scientific sense by some such phrase as the "brief statement or formula which resumes the relationship between

[11]Curtis, *Op. cit.*, p. 239.

a group of facts." Indeed it would be well, were it possible, to take the term *formula*, as already used by theologians and mathematicians, and use it in place of scientific or natural law. But the latter term has taken such root in our language that it would be hard indeed to replace it now.[12]

Again he says:

The civil law involves a command and a duty: the scientific law is a description, not a prescription. The civil law is valid only for a *special* community at a *special* time; the scientific law is valid for *all* normal human beings, and is unchangeable so long as their perceptive faculties remain at the same stage of development. For Austin, however, and for many other philosophers too, the law of nature was not the mental formula, but the repeated sequence of perceptions. This repeated sequence of perceptions they projected out of themselves, and considered as part of an external world unconditioned by and independent of man. In this sense of the word, a sense unfortunately far too common today, natural law could exist before it was recognized by man. In this sense natural law has a much older ancestry than civil law, of which it appears to be the parent. For tracing historically the growth of civil law, we find its origin in unwritten custom. The customs which the struggle for existence have gradually developed in a tribe become in course of time its earliest laws.[13]

Scientific laws might better be termed generalizations because they are merely formulations of experience. The use of the term law is misleading, if it results in belief that scientific laws must be regarded as established by some agency. In primitive times, the laws of social custom were believed to have had some divine origin; and later, civil laws were known to be established by men. Hence, the popular connotation of law is that a rule, established by some power, and which must be obeyed. By analogy, the laws of nature were regarded as principles established for the guidance of the universe. Nature thus appears to act under a sort of legal necessity, whereas the fact is that we have merely so constantly or so definitely observed certain sequences and complexes of inter-relationships that we feel certain they will reappear under similar circumstances. It is extremely difficult to escape the idea of necessity in the case of the relationship which is designated cause and effect. But even here scientific analysis reveals no necessity, beyond the relationship between phenomena which has been observed in so definite fashion that the cause may be presumed always to be followed by its

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[12]Pearson, *Op. cit.*, p. 81.
[13]*Ibid.*, 87.

> effect. A law in natural science is a short-hand method of describing the probable order of phenomena. In general, such laws are regarded by scientists as discovered relationships, not as agencies which force nature to move in particular directions.[14]

In the legislative sense law is a prohibition enacted by some governing body which carries with it a penalty for its violation. Moral law is a standard of conduct erected by the community through custom and is enforced by group censure, condemnation or ostracization for its violation. Divine law is moral law based upon Scripture teaching. But scientific law is only a statement of what is found to occur with unvarying regularity. The content of "goodness" or "badness" is entirely absent from its meaning. There are no "good" or "bad" scientific laws. In fact, the idea of "goodness" and "badness" has no place anywhere in science. These are terms which belong to the vocabulary of the philosopher and the theologian. In the physical sciences, for example chemistry, the phenomena are considered only in the light of their relations and sequences with no question of moral content involved whatever. The chemical formula of H_2O is a symbolic expression of the law that two parts of hydrogen combined with one part of oxygen under certain conditions invariably produce water. At least the experience of man has never found this law to vary. It is more difficult to conceive of law as thus existing in our social relationships. Their statement there may not be so precise or exact. But there is an order of relation and sequence in all human association which may be reduced to statement in terms of scientific law or formula. However, very little has been accomplished in sociology in this direction other than extend a number of hypotheses to the place of dependable social theory. The time within which sociology has been in existence has been too brief for the establishment of many social laws.

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[14]Curtis, *Op. cit.*, 238.

Characteristics of the Scientific Method

Accuracy.—The fundamental aim of the scientific method is to arrive at accurate knowledge regarding the subject investigated. It differs from common-sense or ordinary knowledge only in that it is more exact, more thorough, more sustained, and based upon a more inclusive consideration of all the possible pertinent facts. The whole range of the relevant data must be considered in a scientific investigation. Nothing can be left out. Common-sense knowledge is based upon snap judgments. It rarely gives exhaustive consideration to the particular facts involved, much less to the whole of them. When this is done it passes over from common-sense knowledge into scientific knowledge. The scientific method is nothing more or less than those methods which the experience of mankind has proved the most effective in gaining accurate knowledge applied in our reasoning processes to the establishment of exact and, therefore, reliable and dependable knowledge. It is, in one sense, only the most logical reasoning applied to the discovery and formulation of natural law. The entymology of the terms which have come to designate the different sciences implies this in that in most instances they make use of the suffix logy, from which the word "logic" is derived. For instance, "Bio-logy" might well be defined as the "logic" of living things—logic meaning here the knowledge which has been reached by means of correct processes of reasoning. In order to attain this knowledge and safeguard in every possible way these processes of reasoning from error, scientists have learned several important things which are so invariably observed that they may well be termed the characteristics of the scientific method.

Recording of Observations.—Man's memory is a precarious reed on which to lean. A furniture finisher was given the task of refinishing an expensive piano. He mixed his varnishes without keeping a record either of the quality or proportions of the ingredients. By some chance, he obtained a finish which was superior to anything he had ever

seen. He knew that he could make a fortune could he only produce such a finish all the time. He tried to mix the materials in the same way again, but without success. Repeated trials and chemical analysis all have failed. Had he recorded his work when it was done, he might now be in quite different financial circumstances. Hence, it is characteristic of the method of science that all facts observed shall be faithfully and carefully recorded and that dependence not be placed on the memory to recall them. Various techniques and devices have been provided by which such observation may be recorded so that they may be readily accessible. Each science has developed its own methods in this regard but the general principle is that a record of a dependable sort shall be kept.

Classification.—The things which we observe may be like or unlike either as to quantity or quality. They may have size, place, time, number, or order of occurrence. To classify facts simply means to put in groups those which present certain similarities or likenesses. It should be done with great care and discrimination and in itself involves many methods and means by which it is accomplished; but it is one of the outstanding characteristics of science. It cannot be said to be a first step in scientific investigation, but a process which must be carried on throughout the entire course of it. Then also the aim of science is to discover bases upon which to make an inclusive classification of the phenomena studied, and when a classification is complete we have what is called a body of knowledge. It is what some define as science itself—classified knowledge. Hence, every scientific study strives from the very beginning to classify its facts.

Working hypotheses are characteristic of the method of science. Hypothesis means "thrown under" or "set out beforehand." In a scientific investigation the first facts discovered may point to certain relations, sequences or conclusions. The investigator thereupon assumes these to be true and the assumption becomes a working basis upon which to proceed with the investigation to a final conclusion

or general statement of the relations of the facts. It is something more than a mere guess, as popularly supposed. It is an assumption based upon the data as it appears to the investigator, and is adopted for the time being as a tool for further research. When additional facts are brought to light, the hypothesis either becomes more thoroughly established, modified or restated, or it is disproved and abandoned entirely. A working hypothesis becomes a law in the scientific sense only when the search for facts has been carried to the fartherest possible extreme; no facts to disprove the hypothesis have been found; and all of the facts verify it. So long as additional facts are not obtainable, or are insufficient for a final conclusion, the assumption must remain a working hypothesis. All known facts may point to its validity, but it cannot become a scientific law until the research has relatively exhausted all possibilities. Under some conditions it is not possible to verify or disprove the hypothesis, in which case it must forever remain only such.

The working hypothesis greatly simplifies and expedites the work of the scientist. It enables him to limit the scope of his investigation and makes it unnecessary for him to make random and haphazard observation of all phenomena. It limits his search to relevant facts, enables him thus to concentrate his time and energies on the problem in hand. Herein lies one of the secrets of the far-reaching successes of modern science.

Every modern invention may be regarded the direct or indirect product of hypothetical reasoning. It is a simple, practical, easily understood, exceedingly flexible and widely adaptable principle. Yet the popular mind has clothed it with mystery, and has thus failed to see that science is only the common-sense method of every day reasoning safeguarded from error, hedged about by every possible device to prevent mistake, purified of all motives other than the desire to know the truth, and intensified to the highest degree of perfection. Yet as a method, it is not without its dangers, and is subject to misinterpretation and abuse. This is well stated by Professor Chapin:

A student should be taught to guard against certain logical fallacies in the use of the inductive method. Even careful writers are prone to confuse a working hypothesis with a scientific law. *A priori* knowledge is often confused with a *posteriori*. It is helpful in this connection to differentiate the chief levels of generalizations. At the lowest level is the working hypothesis, a mere assumption, supposition, or conjecture. The accumulation of relevant evidence and the criticism of such a hypothesis may raise it to the second plane, that of theory,[15] but it is should not be forgotten that a much-discussed set of associated hypotheses, known as a theory, still lies in the realm of speculation. A theory and its component hypotheses may be tested by the canons of logic and submitted to syllogistic analysis, but it is highly dangerous to make a deduction from a theory. The third and highest plane of generalizations is that of a scientific law established by induction from facts. It is entirely permissible to make a deduction from such a generalization.[16]

Professors Park and Burgess have shown conclusively that the discovery of truth by this process of reasoning by hypotheses constitutes natural science:

Natural law, as the term is used here, is any statement which describes the behavior of a class of objects or the character of a class of acts. For example, the classic illustration of the so-called "universal proposition" familiar to students of formal logic, "all men are mortal," is an assertion in regard to a class of objects we call men. This is, of course, simply a more formal way of saying that "men die." Such general statements and "laws" get meaning only when they are applied to particular cases or to speak again in terms of formal logic, when they find a place in a syllogism, thus "Men are mortal. This is a man." But such syllogisms may always be stated in the form of a hypothesis. If this is a man, he is mortal. If A is B, A is also C. This statement, "Human nature is a product of social contact," is a general assertion familiar to students of sociology. This law or, more correctly, hypothesis, applied to an individual

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[15]It should be noted that Professor Chapin here uses the word "theory" in a technical rather than its popular meaning. Popular usage makes it synonymous with a hypothesis or set of hypotheses. Sometimes it is opposed to practice as the theoretical and practical. Here it simply represents a half-way station between a hypothesis and a scientific law—a hypothesis verified to a degree of dependence, but not fully established.

[16]*Proceedings of the American Sociological Society*, Vol. XVII, pp. 170-1.

> case explains the so-called feral man. Wild men, in the proper sense of the word, are not the so-called savages, but the men who have never been domesticated, of which an individual example is now and then discovered.
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> To state a law in the form of a hypothesis serves to emphasize the fact that laws—what we have called natural laws at any rate—are subject to verification and restatement. Under the circumstances the exceptional instance, which compels a restatement of the hypothesis, is more important for the purpose of science than other instances which merely confirm it.
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> Any science which operates with hypotheses and seeks to state facts in such a way that they can be compared and verified by further observation and experiment is, so far as method is concerned, a natural science.[17]

The formation of a working hypothesis upon the basis of the facts as they first appear to the investigator is the first step in every scientific investigation. This hypothesis should be capable of statement in the form of an assertion as, There is a relation between A and B. This relation may not be known or it may be definitely inferred. In which case, the statement would be more definite in form as: There is a *certain* relation between A and B. The hypothesis should also be capable of statement in the form of a question: Is there a relation or a *certain* relation between A and B?

Having formed the working hypothesis, the next step is to obtain the additional facts which may prove, disprove, or modify it. Three outstanding methods have been used separately and together for this purpose. These three methods may be used interchangeably as methods of discovery and methods of proof. They may reveal to the investigator working hypotheses or the additional facts by which previous hypotheses may be proved or disproved. They are commonly called the methods of *verification* although they are equally methods of discovery.

Experimentation.—This method is well known in the sciences which deal with material or non-living phenomena. For example, in chemistry the investigator may establish the hypothesis that chemical A combined with chemical B under

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[17] Park and Burgess, *Op. cit.*, 121.

certain conditions will produce a certain result. To prove it, it is necessary to separate these two chemicals from all others; combine them in their purest form under the exact conditions specified. The result named should then follow. When the experiment has been repeated many times and the result assumed invariably follows, a strong presumption is established for the hypothesis. When it has in turn been performed with like results by other investigators and so confirmed, it becomes a law in science. The characteristic of this method is that the phenomena are under the control of the investigator who may at will create the situation under which the hypotheses may be tested. Those sciences which in the main utilize this method of establishing the validity of their hypotheses are called experimental or empirical sciences.

Observation.—Another method has to do with situations in which the investigator has no control or a very limited control over the phenomena. He can only observe what takes place when it does take place. A typical science which illustrates this method is astronomy. The astronomer can in no wise direct the movements of the heavenly bodies to suit his pleasure. He can only train his telescope upon them, observe, record, and classify what they do. The stations established by the Government and private foundations for the study of the stars are therefore rightly called "observatories." In like manner in the weather bureaus established by the Government for the study of weather conditions, the official in charge is designated a "weather observer." He does not experiment with the weather, however much he would like to do so. In the same way the Government has other stations which are called Agricultural Experiment Stations; because the method by which they discover and establish hypotheses is in the main that of experimenting with crops, with soils and with breeds of cattle under conditions over which the investigator exercises a limited control. Those sciences in which the method of observation is the main dependence for the discovery and establishment of hypotheses may be called Observational

Sciences. It is in this group that sociology is classed and it is this method in which it places its major dependence for verification.

Comparison.—Another method, while not entirely distinct and separate from the former, is of sufficient importance to merit separate consideration. It is called the "Comparative Method." From one point of view, it may be considered as a phase of the observational method. Professor Hayes discusses it as follows:

> The comparative method of investigation is characteristic of the sciences of life. In investigating inorganic phenomena we guess with such reason as we may at the conditions that give rise to a phenomenon that is to be explained, and then supply the condition, and if the phenomenon emerges we regard our hypothesis as confirmed. And we vary the conditions and observe the corresponding changes in the resulting phenomenon. But in sociology we observe the phenomenon to be explained wherever we can find it, note the conditions in presence of which it appears, eliminate from the explanation those non-essentials which are not always present and observe the differences between the different instances of our problem phenomenon and the corresponding differences between the conditioning situations in which it emerges. The contrast between experimental and comparative science is that in experimental science we make our facts, while in comparative science we search for the facts as nature supplies them. In order to eliminate non-essentials and identify essentials in the explanation and to correlate changes in the resultant with changes in the causal conditions, we may need to observe many instances and to find these instances we may have to search through many ages and climes, especially among many different contemporary societies in as wide a variety of conditions as possible.[18]

Generalization.—The goal of scientific investigation is to arrive at generalizations concerning the phenomena which are being investigated. A generalization is a statement of what is found to be true or to obtain in general within a group or between groups of phenomena, i.e., scientific law as it has already been explained. This involves causal explanation. "A causal law of science is a statement of the conditions out of which a recurrent phenomenon regularly emerges."[19] Every scientific law either states or implies

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[18]Hayes, E. C., *Introduction to the Study of Sociology*, p. 449.

[19]*Ibid.*, 21.

a causal relationship, ordinarily indicated by the term "relations and sequences." The relations of phenomena considered by science ordinarily have reference to cause and effect, i.e., phenomena are the producing causes of others and in turn are the effects of previous phenomena. Sequence implies the temporal order in which they come, i.e., phenomena follow other phenomena in regular order.

Prediction.—Having established a generalization or law touching a group or class of phenomena, deductive application may be made to predict future occurrences. Any science which has established laws may predict future results upon the basis of these laws. To say that a science is capable of prediction, is simply to say that its laws work and are workable. Prediction, then, is an essential element of the scientific method, and is the principal province. But prediction is ordinarily confined to classes or groups of phenomena and not to individual units. A chemist does not predict the behavior of an atom, but he can tell with a high degree of certainty the behavior of atoms en masse under given conditions. In the social sciences, it cannot be determined in advance what any human being will do under given conditions. But it can be determined what a group or class of human beings will do. For instance, insurance actuaries do not know the specific individuals in a group of 100,000 who will die in a given year. But they can predict the number who will die under ordinary conditions and do so with such a degree of accuracy that one of the greatest modern business institutions is founded upon their predictions. Prediction is simply telling in advance what will in all probability occur and the order in which it will occur. Its reliability as a deduction from generalizations depends upon the soundness of the inductive reasoning upon which they are based.

A particular *point of view* characterizes the spirit and method of science. That is, it has come to be characteristic of virtually all sciences to view their phenomena from a common angle. This point of view may be thought of in

terms of cause and effect, of one event logically following another or others in an orderly causal process. Science has come to view everything as in process of change. It no longer looks upon the world as static or standing still. It views it as dynamic, or eternally moving. Things are not today as they were yesterday, nor will they be tomorrow as they are today. Today is the child of yesterday and the parent of tomorrow. Change or movement is universal in time and space. All things are in a process of becoming. To discover order, uniformity, generality, and law in this process is the chief business and function of science. That there is order and uniformity in the process is a universal postulate of science. Where and how it began and where and how it shall end is not so much the concern of the scientist as the fact that it is going on, how it operates and what it means for the present and the future. Perhaps no single concept in modern thought has had a more transforming effect in the field of education or the whole of human affairs. It underlies every scientific investigation of the past century and undergirds the entire structure of all modern science. It is at once the most universal and the most supreme hypothesis of science.

By way of brief summary of all that has been said, the following working definition of science is here offered: Science is the method by which the relations and sequences of the essential recurring facts in any group or groups of phenomena are sought accurately to be ascertained, analyzed, classified, and recorded in bodies of knowledge by means of working hypotheses advanced to generalizations, or laws, through inductive reasoning based upon adequate and unbiased observation, experimentation, or comparison.

The Scientific Attitude

Science may be further considered in terms of attitude. To say the least, science and scientific investigation require a particular attitude or frame of mind. This attitude may be regarded as an essential characteristic of the method of

science. However, it is of such importance that it is elected here to define science in terms of this attitude in addition to the other points of view which are given.

This attitude is first of all *impersonal.* The personal equation should not be allowed to color, much less determine, the conclusions which are reached in the name of science. The scientific investigator comes to his problem without pre-commitments or personal bias to blind his eyes to any facts or truths that may be found. This may not be so difficult with the sciences which deal with material phenomena such as chemistry and physics. It becomes increasingly difficult, however, in the sciences which have to do with social phenomena. Here our pre-commitments, our opinions, our prejudices are more involved and are more liable to be reflected in our conclusions. It is so often the case that a so-called investigation reveals no new truth, but only what the investigator started out to find, or, in other words, what he wanted to find.

The scientific attitude is then one of *open-mindedness.* This does not mean that the scientist is never to have his mind made up on any question, but it does mean that he must be honest and willing to face all the facts involved in any investigation and be ready to revise his opinions when the facts compel him to do so. It is the spirit of science to search as earnestly for the facts which may be opposed to tentative or even supposedly final conclusions as it is to search for the facts calculated to prove them. Scientific results are used as foundations for further investigations, and for this reason they are tested again and again; and if any man's work is unreliable or fails to abide, it is rejected. This spirit of open-mindedness explains in part the fact of frequent change, modification, if not reversal of scientific judgments. The true scientist is always willing to change his mind to fit newly discovered facts, and does not try to force the facts to fit his mind. His is the patient, disinterested, painstaking willingness to search for the facts, all the facts, and nothing but the facts

and to postpone the expression of any final conclusion or even authoritative opinion until all the facts are known.

It is the spirit of science to be *critical*. Every fact admitted upon the witness stand is challenged from every angle and not given consideration until its credibility is thoroughly established. Mere opinion means nothing to the scientist, no matter how great the authority voicing it. Science must spare no cost in its efforts to verify by every possible means the facts upon which it may base its generalizations. Hence, it should not be thought strange when science conflicts with ancient opinions, long established customs and traditions, and when in this conflict it demands that all phenomena be submitted to the clear light of calm, deliberate and dispassionate reason. True science is unafraid of the light. It is willing to know and demands proof for all that it is asked to accept.

It follows that the attitude of science is undogmatic. Many scientists are dogmatic in their attitudes; but they did not get their dogmatism from science, for it is no part or parcel of the attitude of science. True science asks no one to accept its conclusions on the basis of the prestige or authority of the one making them. It knows no authority other than the content of the facts; it depends upon no traditional interpretation; but it invites every man intelligently and honestly to face the facts for himself, to interpret them for himself, and to form only those conclusions which their logic compels. The true scientist is therefore not a propagandist. Dogmatism and propaganda go hand in hand; the one always involves the other. When anyone has uppermost in his mind the conversion of others to a view or theory and is devoting his major interest to this achievement, he is a propagandist. He will not be a propagandist very long without also being a dogmatist. Many scientists, especially in recent days, have failed to realize that their conduct is as reprehensible as that of the extreme dogmatic religionists whom they condemn.

Again, the attitude of science may be characterized as *intellectual honesty*. To tell the truth in all one's dealings

with his fellowman is to be socially honest. To square one's conduct with the ethical codes of one's generation is to be morally honest. But to think straight and to be square with one's self in giving full and due consideration to all the facts involved in a question without personal bias, with an open mind, with critical discrimination and undogmatic spirit is to be intellectually honest. No man who is not honest with his own rational self has a business trying to be a scientist, nor any right to voice an opinion concerning the findings of science, nor any right to sit in judgment upon the motives and integrity of scientists. Intellectual honesty is a commendable trait of character for any man. It is imperative for the scientist. It is regrettable that some who wear the name do not have it and can only be classed as pseudo-scientists.

THE PUBLIC CHARACTER OF CONSULS

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For a complete understanding of the juridic position of consuls at least four, and possibly five, sources of authority must be consulted: viz., the laws and executive regulations of the state which appoints the consul, those of the state which grants him his exequatur, treaties in force between the two states, and the general customs and usages applicable to the subject. To these may be added for the sake of completeness, doctrine as established in the writings of international jurists.

The first of these, the laws and regulations of the state granting the patent, primarily applies, of course, between the consul and his government. The consular regulations of many states expressly provide that the consul has no diplomatic character and forbid the invoking of the privileges of diplomatic agents. While such a provision directly concerns only the claims which may be put forward by the consuls appointed by the particular state, it may be taken as a fairly certain indication that the same rule will be applied to consuls whom that state may receive.

Of more importance in the determination of the public character of a consul is the law of the state which receives him. It is this which marks out the scope of the exemptions from the ordinary operation of the law which the consular officer is entitled to enjoy. Naturally this makes it possible for the extent of the immunities to vary with the different states since it could hardly be expected that all states would enact the same law. In actual practice only a few states have made any attempt to place on a definite basis the privileges which foreign consuls within their limits may enjoy; the majority have been content to let the matter rest on usage so far as treaty provisions do not cover the situation.

Of greater importance than either of the foregoing because of their wider extent are the provisions inserted in general treaties or incorporated into consular conventions. These again have introduced an element of confusion into the general situation in almost exact proportion as they have cleared up the particular one; for the treaties are applicable only as between the parties signatory, and there is no general consular convention in efect. Since the extent of the immunities granted in the different treaties has varied, and since the states of the world have not negotiated conventions at the same rate, some being laggard in this respect while others have been exceedingly active, the difficulty of expressing in general formulae the extent of consular privileges and the consequent definition of the consular character has increased. Fortunately, practically all of the more recent conventions have approached a norm; and as the use of the most favored nation clause is more widely extended, the degree of uniformity is steadily becoming greater. Of course, when there is an applicable treaty provision it takes precedence over the general rules of international law and, by express stipulation, over the provisions of the local law.

Much has been left to custom in this field; and as custom in the various consular districts has not been the same, it is impossible to state definitely in a single paper everything that may be claimed in a particular place on this ground. Nevertheless, certain outstanding privileges may be claimed on the basis of usage; and in the absence of treaties or positive law, custom is considered as controlling. Much that formerly was based on custom has been incorporated into treaties; and conversely, much that has been written into treaties has been advocated by some authors as having a basis of custom, in cases where there are no governing treaty provisions.

The extent to which international doctrine is applicable is doubtful. Properly its position is prophetic, not descriptive or historical. Considerable unnecessary confusion has

been introduced into the subject by writers and even statesmen and jurists through their failure to distinguish between what exists and what is their own opinion, or in that of some one else, should exist. Text writers have shown themselves prone to copy each other, probably as the easiest way to treat an unsatisfactory field; what one man says ought to be the rule governing consular privileges passes through the hands of several writers and finally emerges as a statement that such does exist; and that without other authority cited than the first statement. Yet the important part that may be played by doctrine is not to be denied. By pointing out what should be the rule, it helps to focus attention upon an existing lacuna and paves the way for the eventual acceptance of a new rule.[1]

From what has been said it is apparent that the extent to which consular privileges are recognized may be by no means uniform in all states. Such is the case. At one extreme is England which has steadily refused to negotiate a single consular convention and which has challenged the existence of certain privileges based upon custom; at the other is France, which country has negotiated a large number of such treaties, and has uniformly been ready to extend broad privileges even in the absence of treaty stipulations. Between the two positions fall the other states, their practice being far from uniform.[2] Thus it is necessary to study the

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[1]On the subject of the factors to be considered in determining the juridic condition of consuls see an article by Dr. Daniel Antokoletz on "La Condición Jurídica de los Cónsules y Especialmente de los Cónsules Argentinos" in *Revista Diplomática y Consular Argentina*, December, 1915, Vol. I, No. 2.

[2]Professor Stowell accounts for the discrepancy in the degree of privilege recognized by the difference in power of different states. *Le Consul*, p. 142. While this may be true in the main, and probably accounts for the British position which is one of claiming all privileges to which there is a vestige of a right for British consuls and denying privileges to foreign consuls in Britain, it can not serve as an explanation of the present position of the United States nor of France, both of which states are liberal in their interpretation of the immunities which may be enjoyed by foreign consuls within their borders.

position of the particular state to ascertain just what privileges a consul may claim.

The extent to which these privileges have been recognized has varied not only from state to state but also within particular states from time to time. Consequently, the problem of determining the exact scope of consular exemptions and of stating the present position of each of the more important states on each of these is no small one; and the uncertainty which results is fraught with the possibility of international misunderstanding and friction.[3]

Proof of the statement in the text, which of course is in direct opposition to the quotation from Borel is to be found in a report presented to the Congress of the Republic of Colombia by the Secretary of Foreign Relations in 1847. In pointing out the extremely unsatisfactory postion of foreign consuls in the Republic, the Secretary said:

> The poorly defined consular prerogatives which are found; the pretension, if not explicit at least implied, of the governments of France and Great Britain to obtain for their consuls and vice consuls in Spanish America the same immunities which they have secured for those whom they send to the coasts of Africa; and the absence of categorical declarations in our laws, are the causes which give rise to daily contests which afterwards pressed and circulated almost always end only because the official who represents the Republic must yield, leaving his honor impaired, or resolve to charge himself with the enormous responsibility of having involved his country in a troublesome question which exposes the national dignity to greater outrages.
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> This state of things, and principally the cause from which it springs merits very serious consideration.
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> No other point of the law of nations has been treated by its

[3]In view of the opposing stands taken by text writers reflecting the frequently conflicting positions of the various governments, the statement made by Borel is interesting:

> . . . If the prerogatives of consuls have not been specified in the modern treaties which have been negotiated between the sovereigns of Europe, it is because they are too well known for it to be thought necessary to give them an ulterior designation. For, these same princes have taken care to express them in the conventions which they have made with the less enlightened powers, as with the Barbary States and with the Ottoman Porte. (Borel, Francoise, *De l'Origine et des Fonctions des Consuls*, 1807.)

> expositors with such lightness and vagueness, as that of the privileges of consuls. While some assert that these functionaries lack all immunity, that they are denied other guarantees than those owed to any transient foreigner vested with a safe conduct, and finally that they have no character superior to that of mere commercial agents; other writers, and among them the celebrated Vattel, maintain that consuls represent the Government which names them, that they are not subject to the jurisdiction of the country in which they reside, and that they cannot be subjected to it except in case of having committed atrocious crimes.
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> It results from this disagreement of opinions and doctrines that, if the matter were not exceedingly important and delicate to leave abandoned to chance, a weak state should not adopt, because it could not do so with assurance of success, any decisive determination on this point; since whatever it might be, it would be resisted, not only by force, but also with the arms of reason and the authority of the peso. (Uribe, *Anales Diplomaticos y Consulares de Colombia*, Vol. III, pp. 193-197.)

At the outset of a discussion of the character of the consular office one encounters the question: Are consuls diplomatic agents and as such entitled to the privileges and immunities which inhere in that character? If the question be answered in the affirmative, the problem is reduced to that of ascertaining what exemptions these officers enjoy. If it be answered in the negative, there is still the problem of determining whether or not they are, nevertheless, entitled to some privileges; and if so, what these are. Much has been written on the general subject; it is the purpose of the present paper to examine the official declarations of a number of states.

Three distinct answers to the question have been given, and on the basis of these answers the writers on the subject may be divided into three groups. At one extreme is a small group of publicists, headed by Pinheiro-Ferreira, which maintains that consuls are public ministers, though perhaps of a grade lower than charges d'affaires.[4] The opposite view is that consuls are mere commercial agents, and as such entitled to no different treatment than other foreigners. The third view is a compromise between the two preceding, refusing to recognize consuls as entitled to

the character and privileges of public ministers but conceding that they are in spite of that fact, entitled to certain exemptions, that they are to a certain extent under the protection of the law of nations. It is this last view which has the support of the majority of the publicists of today, and what is more important, the sanction of the statements and practice of modern governments.

A survey of the pertinent publications of a number of states shows that the majority have unreservedly placed themselves in opposition to the view that consuls are public ministers, though in nearly every case there is no doubt that the consul is regarded as being entitled to more consideration than an ordinary national of his state. No reference is made to statements of text writers, nor are treaties listed below—though it is believed that a study of treaties of other states would show results similar to those of a study of United States treaties. Of the latter only two consider the question of the similarity between consular and diplomatic positions, and both of those specifically deny the existence of any diplomatic character of the part of consuls. The other three sources have been used: laws and regulations of sending and receiving states and custom where reference to it has been found.

Argentina: "They are, in a foreign country, under the special protection of the law of nations, and must claim all the immunities and privileges accorded to their class." *Reglamento Consular*, 1862, Art. 9 contained in *Memoria del Ministerio de Relaciones Esteriores* for 1879. This statement is repeated in Article 58 of the *Reglamento Consular*

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[4]The chief exponents of this position, in addition to Pinheiro-Ferreira, are Steck, de Cussy, Moreuil, and de Clerq and de Vallet. M. Engelhardt has shown himself an ardent champion of this view at various sessions of the Institute of International Law. His various reports on the subject of consular immunties present the best exposition of the reasons for the position. The International Law Association at its meeting in Buenos Aires in 1922 passed without discussion a resolution pointing out the desirability of granting to consuls of career the largest prerogatives of diplomatic agents. Report of the Thirty-first Conference, p. 168.

of 1906 and is followed in Article 59 by the declaration: "According to international law, a consular officer has no representative or diplomatic character with respect to the country in which is accredited. He has, notwithstanding, a representative character in that which refers to the commercial interests of the country which has accredited him." The *Anuario* of the Ministry of Foreign Relations for 1908 contains an extract from a study by Dr. Carlos Alfredo Becú, secretary of the Argentina delegation at The Hague conferences. Among other things, the author, apparently with the approval of the Ministry, states: "Consuls, mere commercial agents, are not invested with diplomatic character . . . Their powers spring from their functions, and are only those necessary for their discharge." Page 291.

Belgium: A statement of consular concessions made by royal decree in Belgium, set out in a letter of May 19, 1838, to the Secretary of State of the United States, shows them to be far short of those of diplomatic agents, which seems to be proof of a non-recognition of diplomatic character. Mss. Dept. of State, Belgium Notes, Vol. I.

Bolivia: "Consular agents do not enjoy prerogatives except in so far as the customary law of the country in which they function permits; nor do they have an official character to address themselves to the authorities of the place in which they reside." *Reglamento Consular,* 1877, Art. 20. The Regulations of 1887 contain a separate title referring to foreign consuls resident in Bolivia, Article 103 of which is to the effect that "Consuls do not enjoy the exemptions conceded to ministers and diplomatic agents."

Chile: Article 35 of the *Reglamento Consular* of 1897: "Consuls cannot claim diplomatic privileges, exemptions, and immunities." The same idea is contained in the Regulations of 1915, Article 112 of which provides that "Consuls lack a political character and cannot, in consequence, be considered as diplomatic officers," with the additional statement that "They find themselves in the foreign country under the protection of the law of nations and must claim the prerogatives accorded to those of their class."

Colombia: "They do not have . . . diplomatic character with respect to the country to which they are accredited. Nevertheless, they have a representative character in that which refers to the commercial interests of Colombia. *Guía Consular*, p. 29.

Costa Rica: "Consuls cannot claim diplomatic privileges, exemptions, or immunities," nor seek precedence or distinctions not granted by treaties or usage. Regulations, 1888, Art. 29.

Cuba: Pages 6 and 7 of the *Instrucciones Provisionales para el Servicio Consular* are almost identical with Article 112 of the Chilean Regulations of 1915.

Germany: As early as 1796 Prussia issued regulations to the effect that:

> We will endeavor still to assure to each of them the enjoyment of their immunities, rights, and prerogatives which will be due them in their capacity as consuls. These immunities differing nevertheless according to the countries, we will abstain from establishing here any general principle in this regard, reserving to Ourselves to make known our intention to consuls in each particular and doubtful case of which they will judge it a duty to make a report to us. (Bursotti, *Guide des Agents Consulaires*, Vol. II, p. 274.)

Great Britain: "I am also to remind you with reference to the expressions 'Envoy' and 'Mission,' which repeatedly occur in your despatch, that as Her Majesty's Consul at Massowah, you hold no representative character in Abyssinia." Mr. Murray to Consul Cameron, British and Foreign State Papers, Vol. 53, p. 67 (1863). The central idea of the text is further borne out by the provision in the General Instructions for Her Majesty's Consuls (set out in full on page 37 of Fynn's *British Consuls Abroad)* that "Her Majesty's Commission and the exequatur will secure to the consul the enjoyment of such privileges, immunities, and exemptions as have been enjoyed generally by his predecessors, and as are usually granted to consuls in the country in which he resides; and he will be cautious not to aim at more." Almost the same wording was adopted by Hawaii in the General Instructions of 1880.

Greece: "Consuls have not, as ambassadors and other public ministers, a representative character which places them under the law of nations. They are political agents, but only in this sense, that they are recognized by the sovereign who receives them as officers of the sovereign who sends them, and that their mandate has as a basis either positive treaties, common usage of nations, or the general public law." Instructions of 1834, Art. 2.

Guatamala: While there is no direct statement to the effect that consuls are not diplomatic agents, there is a necessary implication of that fact to be deduced from Paragraph 6 of the *Apendice al Reglamento Diplomático y Consular de la República,* which also states that "Consuls necessarily 'have the right to certain privileges and exemptions' (not very well defined, and which vary according to treaties, customs, or permission of the country of residence) 'without which their charge would be very difficult.' "

Honduras: In Honduras we find one of the few states which have by law defined the extent of the immunities of foreign consuls functioning within the national boundaries. Article 1 of the *Ley sobre Misiones Consulares Extranjeras* is devoted to the consideration of the character of the consular office. "Honduras only recognizes in foreign consular missions the right to represent and protect the persons, interests, and property of their compatriots, within the limits of the jurisdiction in which they exercise their functions. In consequence, consular officers lack a diplomatic character; they are not representatives of the state which names them, nor can they consider themselves attached to that character." Nor is Honduras inconsistent in its position; for no higher standing is permitted to be claimed by Honduranean consuls, since Article 32 of the *Reglamento Consular* of 1906 is identical with Article 35 of the Chilean Regulations of 1897 *supra.*

Mexico: Mexico is another of the states which have passed laws to clarify the situation relative to consular privileges. Unlike that of Honduras, the Mexican law does

not contain a specific denial of the existence of the diplomatic character. However, the act goes into great detail in specifying just what exemptions foreign consuls may claim, and expressly denies the existence of any others. As the exemptions named, while comprehensive compared with those usually granted, are not so inclusive as those granted to diplomats, it is quite clear that the Government of Mexico does not consider the matter an open one—a conclusion which is reinforced by the fact that the law uses the term "commercial agent" as synonomous with consuls throughout. *Ley para Fijar el Derecho Mexicano en Orden a Los Agentes Comerciales en el Territorio de la Nacion* of 1859. The same is true of the *Reglamento de la Ley Organica del Servicio Consular Mexicano* of 1924 and of the *Ley Organica y Reglamento del Servicio Consular Mexicano* of 1911 which it superseded. Both of these applying to Mexican consuls abroad limit the claims of the Mexican consuls to such as they may base upon custom or reciprocity.

Netherlands: The British consul at Amsterdam on December28, 1871, reported that the only privilege which consuls in that city enjoyed was exemption from all direct taxes. *Reports relative to British Consular Establishments,* Vol. II, p. 9.

Peru: The *Reglamento Consular del Peru* carries in Article 28 a statement similar to that of the Argentine Regulations of 1862.

Russia: The Russian position seems to have passed from a denial of the existence of any other than a commercial character in a consul to that now assumed by the majority of states. Thus the *Reports relative to British Consular Establishments* (1872) published among others the letters from the British consuls at various places in Russia, the general tenor of which is indicated by the extracts:

> . . . no privileges attach to the position of consuls in this country. (Consul at St. Petersburg, February 3, 1872, Vol. II, p. 116.)
>
> I enjoy no privileges by treaty or usage.
>
> There are no privileges or jurisdiction enjoyed or exercised by my colleagues, any more than by myself. I know of no country

where the position of consuls stands so low as in this part of Russia. We are treated simply as commercial agents—are refused any privilege but what is enjoyed by foreigners generally, and are scarcely recognized as public functionaries.

If we appeal for any alteration or improvement, we are accused of interfering with local regulations. (Consul at Kertch, Crimea, October 31, 1871, Vol. II, p. 89.)

The English consul general at Odessa possesses no privileges or jurisdiction beyond what is enjoyed by his consular colleagues, who by treaty come under the most favored nation clause. In fact, of privileges, I know of none now which a consul can claim more than a private individual of the same nation, excepting in one or two trifling matters, such as exemption from passport-tax whilst residing in the country, and the receipt of books for private use free of duty, and without being subject to the "censure." (Consul general at Odessa, 1871, Vol. II, p. 99.)

Consuls are held in little consideration, and have but slight influence here. (Consul at Taganrog, December 1, 1871, Vol. II, p. 126.)

A change was made in this position, however, before the fall of the Romanoffs. Baron Heyking in his work, *A Practical Guide for Russian Consular Officers*, lists a number of privileges which were enjoyed by foreign consuls in Russia at the time he wrote; and the Russian consul general at Seattle has in a letter commented upon the highly privileged position of such officers in his native state during the Empire. The unsettled conditions following the revolution were marked by a refusal of the Soviet Government to recognize the privileges usually accorded to consuls, according to the same letter, which, however, was written by a man with strong imperialist convictions. The legal position of foreign consuls under the new regime was defined in a decree issued in 1921. The London *Times* of July 19, 1921, carried a report to the effect that:

The *Isvestia* recently published a decree of the Soviet Government under which diplomatic immunities and extra-territoriality for representatives of foreign nations is reëstablished. Consular officials will enjoy the usual privileges.

A despatch from the American consul at Viborg, Finland, to the Secretary of State, under date of July 28, 1921, contains a summary of a decree, presumably the one mentioned in the *Times* despatch, of July 7, 1921, on the position of

consular representatives in Russia. This summary contains a list of privileges, more restricted than those of diplomatic officers, which definitely aligns the Soviet Government with the leading states of the world in this respect.

Salvador: The Salvadorean *Ley sobre Misiones Consulares Extranjeras* which defines the position of foreign consuls in that country contains in Article 1 a provision identical with that of the Honduranean law of the same name. Article 40 of that law denies to consuls any claim to the privilege of exterritoriality.

Uruguay: "Consular agents in a foreign country are under the special protection of international law, but they should not claim the immunities and privileges which belong solely to diplomatic agents" according to Article 40 of the *Reglamento por el cual Deben Regirse los Consules de la República Oriental del Uruguay en el Ejercicio de sus Funciones* bearing the date of 1878. Such is a correct statement of the Uruguayan position today, though the Regulations of 1906 (Art. 71) and of 1917 (Art. 56) use language similar to that of Article 112 of the Chilean Regulations of 1915, *supra.*

Venezuela: By decree of June 27, 1912, it has been established that "Consuls, vice consuls, and other employes of this category, whatever be the name by which they are designated, will be considered in Venezuela as commercial agents, without diplomatic character, and as such will not enjoy other immunities than those accorded in the decree of January 25, 1883 . . ." *Gaceta Oficial,* June 28, 1912. The decree is also published in Chile's *Boletin de Relaciones Esteriores,* 1914, Vol. I, No. 42, p. 3. The relevant part of the decree of January 25, 1883, issued by President Guzman Blanco, was taken from a report of Vice President A. L. Guzman under date of April 12, 1852, and reads as follows:

> . . . the Government . . . as a point of positive public law has decided that consuls . . . do not enjoy personal immunities, exemptions, or privileges, which lessen in any manner the territorial jurisdiction, whether they be or have been named by the Government of the Republic in foreign ports, or be or have been named

by friendly governments for the ports and cities of the Republic.

That this does not diminish the independence to which the Government recognizes they have the right in order to exercise the functions of their charge, when they are in accord with the laws in force in the territory in which they are acting. (Contained in Seijas, *El Derecho Internacional Hispano-Americano*, Vol. I, p. 432.)

This position has been reinforced by the passage of a law declaring functions of consuls and diplomatic agents to be incompatible and refusing to permit any person to be accredited to Venezuela in both capacities. The statute was upheld when Peru appointed a consul general and charge d'affaires; after an exchange of notes the individual appointed was recognized as charge but without any consular duties. See Venezuelan *Libro Amarillo* for 1923, pp. 252 and 253.

Other states: In addition to the above list of states which have clearly committed themselves to the position that consuls are not diplomatic agents but nevertheless enjoy some privileges, may be added others whose official pronouncements do not treat of the matter directly but none the less assume that as the basis of the provisions which are made. Among these are Brazil *(Consular Regulations* of 1830), Dominican Republic *(Ley Organica del Cuerpo Consular de la Republica Dominicana* of 1877), Ecuador *(Consular Regulations,* 1870), Nicaragua *(Reglamento Consular* of 1880), and Paraguay *(Reglamento Consular* of 1871).

United States: The first stand taken by the United States was a clear denial of any diplomatic character of consuls and of any protection of the law of nations for these officers; but over a period of years, marked by a series of diplomatic communications, opinions of attorneys general, and departmental regulations, that position has been changed; and it may be said that since 1854 the United States has uniformly maintained that consuls are entitled to some privileges under international law. This development is shown in the accompanying extracts, the first from a statement by Jefferson as Secretary of Foreign Relations:

The law of nations does not of itself extend to consuls at all. They are not of the diplomatic class of characters to which alone

> that law extends of right. Convention indeed may give it to them, and sometimes has done so; but in that case the convention can be produced . . . Independently of (a special) law, consuls are to be considered as distinguished foreigners, dignified by a commission from their sovereign, and specially recommended by him to the respect of the Nation with whom they reside. They are subject to the laws of the land indeed precisely as other foreigners are, a convention where there is on making a part of the laws of the land; but if, at any time, their conduct should render it necessary to assert the authority of the laws over them, the rigor of these laws should be tempered by our respect for their sovereign, as far as the case will admit. This moderate and respectful treatment towards foreign consuls it is my duty to recommend, and press upon our citizens, because I ask it for their good, towards our own consuls, from the people with whom they reside. (Jefferson, Sec. of For. Affs., to Mr. Newton, September 8, 1791; Moore, *Digest of International Law*, Vol. V, p. 33.)

Two years later Mr. Jefferson as Secretary of State was the author of another communication to the same effect. See Moore, Vol. V:34.

The same position was at least inferentially maintained by the Attorney General in 1797. Asked for his opinion on a consul's privilege from legal process, Attorney General Lee interpreted the French convention of 1788 in this manner:

> The second article of the convention seems to me to preclude all doubt respecting the suability of the consul-general. The immunities and privileges annexed to his office are therein distinctly enumerated; and in all other respects, he is subject to the laws as our own citizens are. (I Ops. 77.)

While this language might be interpreted to mean that a consul under the general rules of international law would have those immunities specified in the treaty, it is unlikely that the framers of the treaty would incorporate just those immunities already existing under international law; and it is not probable that the Attorney General would have interpreted the immunities of consuls so differently from the Department of State without giving his reason therefore. Moreover, the problem of the consul's position in the absence of treaty was not before the Attorney General. In any event, the opinion was never taken to imply that consuls had any exemptions under the law of nations; on the contrary,

it has been cited to show that no such immunities existed. See *Consular Regulations*, 1856, p. 20.

As Secretary of State, Monroe apparently continued in the view held by his predecessor; for, in his estimation, while consuls were undoubtedly entitled to great respect as bearing the commissions of their sovereign, "their duties are of a commercial nature and their public character subaltern; neither their persons nor their domicile have heretofore been protected as have those of ambassadors and other public ministers." Monroe, Sec. of State, to Mr. Harris, charge at St. Petersburg, July 31, 1816; Moore, Vol. V:67.

Three years later when Adams was Secretary of State, there was a prima facie departure from this consistent denial, as is shown in his statement that:

> Consuls are indeed received by the Government from acknowledged sovereign powers with whom they have no treaty. But the exequatur for a consul-general can obviously not be granted without recognizing the authority from whom his appointment proceeds as sovereign. "The consul," says Vattel (book 2, sec. 34), "is not a public minister; *but as he is charged with a commission from his sovereign*, and received in that quality by them where he resides, he should enjoy, to a certain extent, the protection of the law of nations." (Adams, Sec. of State, to the President, January 28, 1819; Moore, V: 13.)

Vattel took the fact that a consul received a commission from his sovereign, as a basis upon which he might establish consular immunities. Adams was interested in Vattel's premise, not his conclusion; and the fact that he cited Vattel as an authority that reception of a consul would involve recognition of his sovereign, did not necessarily commit him to Vattel's corollary. It is probable that the portion of Vattel dealing with immunities was quoted merely to complete the sentence; and this view is strengthened by the fact that it was extraneous to Adams's purpose and that the succeeding sentence in which Vattel developed his statement was not quoted. If this be the correct interpretation, the contradiction is apparent rather than real.

Wirt, as Attorney General, was called upon in 1820 to render an opinion in a case in which the Spanish vice-consul at New Orleans claimed to be exempt from arrest in a civil

suit. In deciding that the consul was subject to the civil jurisdiction of American courts (which was the only question involved) the Attorney General stated generally that consuls were not entitled to the protection of the law of nations. (I Ops. 406.)

Again in 1830 the existence of consular immunities on an international law basis was denied, this time by Van Buren, as Secretary of State. Circular, May 5, 1830; Moore, V: 34. But the clearest official denial came in 1835 in an opinion by Attorney General Butler in response to a direct request by the Secretary of State for his opinion of the immunities of foreign consuls. In the opinion, the Attorney General stated that:

> After a careful consideration of this subject, I am of opinion that foreign consuls in the United States are entitled to no immunities beyond those enjoyed by persons coming to this country in a private capacity from foreign nations, except that of being sued and prosecuted exclusively in the United States courts, under the jurisdiction conferred on them by the Constitution and laws of the United States. The question whether consuls are entitled to the privileges belonging to public ministers, has been much discussed by writers on the law of nations and in the English and American courts of justice. The statements of Chancellor Kent in his recent *Commentaries on American Law* (Vol. I, sec. 2) are fully supported by the textbooks and decisions to which he refers; and I therefore take the liberty of quoting them, as expressing my own opinion on this point. (I Ops. 725.)

The opinion of Chancellor Kent to which the Attorney General referred purports to give the law as it was "settled" at the time of publication, not as the author thought it should be. In the light of the Attorney General's comment the following extract from Kent's *Commentaries* takes on an official aspect:

> A consul is not such a public minister as to be entitled to the privileges appertaining to that character, nor is he under the special protection of the law of nations. He is entitled to privileges to a certain extent, such as for safe conduct, but he is not entitled to the *jus gentium*. Vattel thinks that his functions require that he should be independent of the ordinary criminal jurisdiction of the country, and that he ought to be sent home to be punished. But no such immunities have been conferred on

consuls by the modern practice of nations, and it may be considered as settled law, that consuls do not enjoy the protection of the law of nations, any more than any other persons who enter the country under a safe-conduct. In civil and criminal cases they are equally subject to the laws of the country in which they reside. The same doctrine, declared by public jurists, has been frequently laid down in the English and American courts of justice.

Not long after the opinion of Attorney General Butler denying consuls the protection of the law of nations, the United States began to recede from that position and to develop the one maintained today—a step which was almost a necessity for a progressive commercial nation with consuls all over the globe. However, it was only when the rule adopted by the United States began to be applied to American consuls abroad that the possibility of the resulting inconvenience was appreciated. This seems to be the explanation of the fact that slightly more than one year after Attorney General Butler had so emphatically held that "foreign consuls in the United States are entitled to no immunities," Secretary of State Forsyth referred to the imprisonment of an American consul in France as "an infraction of the law of nations." The extent of this innovation may be seen from the following quotation:

It is believed that under the laws and usages of France favors and exemptions are extended to foreign consuls, and that in conducting his defense Mr. Croxall's proper course (in a proceeding against him for assault) would have been to plead the privileges of his official character. However this may be, the imprisonment of an American consul residing in a foreign port is a serious evil and inconvenience, not only as lessening his influence as an officer of his Goverment, but as calculated to produce, in some cases, injurious effects on the interests of American citizens confided to him, and to reflect dishonor on his country. Vattel says (Vol. II, ch. 2, sec. 34) that a sovereign "by the very act of receiving a consul, tacitly engages to allow him all the liberty and safety necessary in the proper discharge of his functions, without which the admission of the consul would be insignificant and deceptive." And, again, speaking of consular functions, the same author observes that "they seem to require that the consul should be independent of the *ordinary criminal justice* of the place where he resides, so as not to be molested or imprisoned, unless he himself violates the law of nations by some enormous misdemeanor."

> Our Constitution recognizes this doctrine by providing in all cases affecting consuls the Supreme Court alone shall have original jurisdiction. (Forsyth, Sec. of State, to Mr. Cass, December 6, 1836; Moore, Vol. V:68.)

Forsyth is a far cry from Jefferson. Reciprocity, urged as a basis for the well treatment of consuls by the latter, is displaced by an appeal to the laws and usages of France with a discreet silence about the laws and customs of the United States. Wirt, who had not scrupled to deny a consul the right of exemption from civil arrest because of his official position, doubtless would have been surprised to find a Secretary of State of the United States protesting against a criminal arrest as a "serious evil and inconvenience." The law of nations, whose protective power had been denied from Jefferson to Butler, was invoked to protect an American consul; and Vattel, whose statements had been challenged by the Attorney General, was cited by the Secretary of State in support of his contentions. The most remarkable statement of all, however, was the citation of the American Constitution to show that the United States recognized the exemption from ordinary criminal jurisdiction. While it would be extremely unpleasant to charge the Secretary with misrepresenting wilfully the interpretation of the constitutional provision, the only other alternative is to admit an alarming ignorance of the acts of Congress, the opinions of the Attorneys General, and the decisions of the courts. Mr. Forsyth was hard put for a shadow of a claim to reciprocity when he was forced to call to his assistance the provisions of the Constitution. The chief significance of the statement is that the United States was unwilling to have the same rule applied to its consuls that was being applied to foreign consuls in the United States, an attitude which ultimately must lead to a change in the American practice.

Less than two years later, in another note on this same case, Secretary Forsyth modified his position in a marked degree when he stated that if Mr. Croxall:

> Stood upon the same ground as all other foreign consuls whose governments had not entered into conventional stipulations with

> France to secure to those functionaries certain privileges and immunities, the United States have no special reason to complain of the course of proceeding against him. It nevertheless appears to the President that the imprisonment of Mr. Croxall while holding his commission from the United States, and his exequatur from the French Government, was not called for by the occasion, and that any restraint upon him, rendering impracticable the performance of his consular duties, if consonant to national law, was not consistent with national comity, as exercised in France to other friendly powers. (Forsyth, Sec. of State, to Mr. Cass, April 13, 1838; Moore, V: 68.)

That his position was not to be construed as maintaining that a consul was entitled to diplomatic immunities was shown by a statement of Secretary Forsyth in 1839, in which he reiterated the position that a consul was not a public minister and, even in the absence of an accredited minister, could not lay claim to the privileges usually accorded diplomatic functionaries. Forsyth, Secretary of State, to Mr. Hagerdon, Bavarian consul at Philadelphia, September 7, 1839; Moore, V: 36.

The net result of the correspondence of Secretary Forsyth seems to be the abandonment of the position that the consul is not under the protection of the law of nations, and the substitution for it of certain, as yet undefined, privileges (among which under some circumstances at least might be included exemption from imprisonment on a criminal charge) under that law. Yet in 1849 Secretary of State Clayton expressed his opinion that a consul was liable to be punished to the same extent as other foreign residents for a criminal violation of the local law of the country of his residence (Clayton, Sec. of State, to Mr. Calderon de la Barca, Spanish minster, August 28, 1849; Moore, V: 34); and it is clear that such a violation of the law in many cases would be followed by arrest and imprisonment as a part of the punishment.

The situation was approached from an entirely different angle when President Fillmore in his message of 1851 informed Congress of the riots in the City of New Orleans which resulted in the subjection of the Spanish vice-consul to insults and in loss of property to the consulate. The

problem presented was not that of exempting consular officers from certain obligations, but of protecting them in the exercise of their functions. In presenting the matter to Congress, the President again reverted to reciprocity, as the following extract from his second annual message will show:

> Ministers and consuls of foreign nations are the means and agents of communication between us and those nations, and it is of the utmost importance that while residing in the country they should feel a perfect security so long as they faithfully discharge their respective duties and are guilty of no violation of our laws. This is the admitted law of nations . . . And what is due to our own public functionaries residing in foreign nations is exactly the measure of what s due to the functionaries of other Governments residing here. As in war the bearers of flags of truce are sacred, or else wars would be interminable, so in peace ambassadors, public ministers and consuls charged with friendly national intercourse are objects of especial respect and protection, each according to the rights belonging to his rank and station.

According to the President's view the office of consul has inherent in it a certain claim to protection by the receiving nation, a protection which must be accorded if the consular office is to fulfill its mission, and which has been accorded by the law of nations. Here again reciprocity was given as a reason for consular privileges; but while Jefferson cited only reciprocity, Fillmore cited a law of nations in which reciprocity determined not the fact of protection but only the amount to be extended in a particular case.

In conducting the correspondence arising from this incident, Secretary of State Webster made a clear distinction between the protection due a foreign consul accredited in the United States and that due to foreigners residing here merely as private individuals engaged in trade and commerce. (Webster, Sec. of State, to Mr. Calderon de la Barca, November 13, 1851; Wharton, *Digest*, Vol. II, p. 60.) This indicated a considerable advance over Butler's statement that a consul was on the same plane with any other foreigner who entered the country, and seems to be in complete accord with the President's views of the consular office.

The opinions of Attorney General Cushing in 1854 and 1855 were marked by a definiteness for the first time shown

in an American treatment of the subject; and they indicated that American opinion had at last turned definitely in favor of consular immunities. From this time the point in issue was not the existence of consular immunities but their extent. The first of those opinions was on the right of consuls to celebrate marriages, a function which would involve the question of exterritoriality. While the Attorney General denied that consuls were public ministers entitled to the immunities of diplomatic agents, he stated:

> In truth, all the obscurity and contradiction as to this point in different authors arise from the fact that consuls do unquestionably enjoy certain privileges of exemption from local and political obligation; but still these privileges are limited, and fall very far short of the right of exterritoriality.

Without discussing the extent of the immunities which the Attorney General recognized as existing, it is worthy of note that he was of the opinion that consuls "do unquestionably" enjoy certain exemptions. From this time on the United States has been aligned with the third group mentioned above, and has definitely recognized that while consuls are not public ministers, they are entitled to some exemptions, though the extent of these has varied from time to time.

Pertinent parts of the *Consular Regulations* of 1856 are moulded along the lines laid down in the opinions of Attorney General Cushing. Thus we find that "consuls possess, moreover, by the law of nations many functions, rights, and privileges, other than such as are defined by convention, by legislative act, or by regulation." (Page 13.) And further, "His commission and exequatur will enable him to exercise and enjoy all the rights, exemptions, privileges, and powers to the same appertaining, and such as are usually granted to consuls in the country in which the consulate is situated; and he will seek for none greater without authority from the Department of State." (Page 40.) The Regulations also contain the extract from Cushing's opinion set out above.

On the other hand, the Regulations state (p. 20) that "A consul is not such a public minister as to be entitled to the

privileges appertaining to that character, nor is he under the special protection of the law of nations." To the first part of the sentence, no exception can be taken; but the second part is in direct conflict with the view of President Fillmore set out above, and seems to be contrary to the earlier statement in the same volume that "consuls possess, moreover, by the law of Nations many functions, rights, and privileges." When it is taken into consideration that among the authorities for the denial of the protection of the law of nations is Kent, it becomes apparent that the inconsistency is a real one. The explanation probably is that the Regulations were compiled without any special thought being given to the subject of consular privileges, and consequently no consideration was given to the change in American position since Kent wrote. At best the most compelling authority for Kent's statement is the fact that it was adopted by Attorney General Butler; against it we have the statement of Attorney General Cushing. The authority for the two being equal, the later in time will naturally prevail, and the recognition of the existence of certain privileges on an international law basis must stand. The inconsistency of statement regarding this matter, unfortunately, is not novel; witness, for instance, the lament voiced by Mr. Cushing in one of his opinions:

> No well-established universality of international rule exists on the subject of the immunities of consuls accredited between the states of Christendom. Of course, there is a diversity of practical administration on this point, according to the tenor of the treaties, the customary law, the legislative enactments, and the executive regulations of each particular country. And the incompleteness of provision, and the uncertainty of doctrine, are especially notable in Great Britain and the United States. (VIII Ops. 169, 1856.)

But if any doubt remained as to the precedence of these two conflicting statements, it was resolved by the revision of the *Consular Regulations* which appeared in 1881, where in the midst of a lengthy statement of consular privileges appears the following:

> Although consuls have no right to claim the privileges and immunities of diplomatic representatives, they are under the

special protection of international law, and are regarded as the officers both of the state which appoints them and state which receives them.

The latest bound edition of the *Consular Regulations*, that issued in 1896, repeats the provision of the edition of 1881; and the loose leaf revision issued in 1923 makes no changes in this regard; so that today the United States definitely recognizes that under international law a consul may claim a certain protection and certain privileges, while he may not pretend to the immunities of a diplomatic officer.

NATURE AS A SOCIAL CONCEPT

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If one studies the bases of the major social ideals of European history, he will find a considerable number of them resting their final argument upon the concept of nature. Nature, perhaps more than any other term, has been used as the foundation for social values, as the court of last appeal. It has been made to do many jobs. It has justified both authority and liberty in their intellectual, political, and economic phases. This discussion purports to make an analysis of the use of nature as a foundation for social ideals with a view to ascertaining (1) why it has been variously interpreted, and (2) why it is almost universally considered ultimate.

I

NATURE AS THE FOUNDATION FOR AUTHORITY

Intellectual-Social Authority.—Plato and Aristotle conceived nature as representing not the beginnings of things but their ultimate purpose. Making an analysis of the purpose or end of man, of his ideals, they found it to be in a social order of an intellectually aristocratic sort. Stating that he was searching for a definition of justice for the individual, Plato's reflections drove him to the conclusion that the individual could find his ideal only in a social order —that the state (meaning by that practically all of one's social relations, not merely the political) was only the individual writ large. Hence the task of finding the ideals of the individual resolved itself into the task of formulating the ideals of society. A study of the genesis of society exhibits the fact that man is naturally a social animal; that he has never existed alone; and that his ideals must be considered in relation to those of his fellowman. Assuming

this premise, Plato's next step was to inquire concerning the nature or purpose of society. Let us first seek the aim of society and the aim of the individual will thereby be added unto us. Consequently the aim of society is the perfection of the whole rather than that of the individual. In respect to any one individual the good of society is superior; but the good of society necessarily involves the development of the individuals who compose it. Social ideals represent the highest values which a group of individuals may attain by functioning together. Without thus functioning the individual can attain nothing; with it, it is possible for each to attain his maximum happiness (at least, that is the only way he can realize values at all).

What are the social ideals which will produce the perfect or natural society? This question resolves itself into two parts: (1) we must consider the natural capacities of human beings, or the elementary conditions for the realization of their ideals; (2) we must consider the possibilities of developing these into an ideal whole. In answer to the first point Plato held that men are naturally unequal and that each has a capacity for doing some one particular thing best. The primary datum for the realization of our social ideals is that men are made differently. The answer to the second point is that our society will be most perfect (natural) which most successfully fits every man to his job and make him sufficiently happy in doing that job that he will not interfere with the business of his neighbor.

The members of the social order or state should fall into three groups. Just as men are divided into three classes of different abilities, the highest social order stands in need of rulers, guardians, and artisans. Some men are by nature fitted to be rulers; they possess the virtue of wisdom and the rights of executives. Others are capable of being soldiers; they enjoy the rights of protectors and the virtue of courage. But nature has endowed the majority of mankind only with the capacity to labor; they must be content to work and to possess the virtue of temperance. Corresponding to the three classes of society we also find three virtues

—wisdom, courage, and temperance. Since, however, the perfect functioning of each of the groups depends upon its relationship to the others, it is all important to see that the correct relations are maintained. This can be accomplished by introducing some sort of virtue that has primarily a social meaning, and Plato finds it in the term justice. *Justice* is a condition of society in which each person or group does what it is naturally fitted to do and does not interfere with the like functions of others.

Nature demands, therefore, an intellectual aristocracy based on real merit. So it is all important that we discover the real ability of each particular person. No one has a right to live upon the reputation and accomplishments of his parents. If the highest class (the rulers) should be described as the golden, the warrior class as the silver, and the artisan class as the brass, it is the business of the administrators to find out where each individual in each generation of society belongs. If it thus happened that the son of golden parents should turn out to be a worthless and trivial fellow, then it would be necessary to relegate him to the artisan class. On the other hand, if the child of brass parents should manifest unusual ability for leadership, he should be elevated to the golden class. In order that the classes should be based, as far as possible, on function, an elaborate system of educational tests and measurements are to be introduced; in order that each individual should be given the fullest opportunities to develop his powers the state is to undertake to define and limit the scope of each person's work, pleasure, and duties. The education is to determine the class to which the person belongs, the class being defined by the ideals of society. Artisans are to work, engage in commerce, etc.; their training is primarily through apprenticeship. Soldiers are to guard the city; they are to be strong in body and mind. The rulers, to whom most attention is paid, must be thoroughly educated, well versed in practical affairs, and imbued with the ambition to serve. This latter trait can be developed by creating in the state the highest social esteem for wisdom, virtue,

and courage; and by prohibiting rulers from owning property or possessing monogamous wives.

Although Aristotle did not agree with some of the minor points of Plato's ideal, he did hold to the fundamental premise that the natural state of man is a social order of intellectual inequality. He objected to communal ownership, both in property and in wives; but he justified slavery as a natural institution. Some men are so born that not only society but the men themselves cannot be happy or efficient unless they are slaves. Now the point to be emphasized here is that Plato and Aristotle interpreted nature to mean an intellectual-social aristocracy in which moral, esthetic, and mental values were to receive the most esteem. Although they felt that only in such a social order could each individual attain happiness, they nevertheless placed the primary emphasis upon submission to the social whole. This is well illustrated by Plato's remark that if by chance some rulers should seem dissatisfied with their lot (deprivation of property and of monognamous wives) they should be persuaded of the duty of looking at the good of the whole rather than selfishly at their own interests.

Rational Authority.—Between the downfall of the Grecian state (and the social ideals of Plato and Aristotle) and the erection of Romanism and Christianity, individuals here and there were seeking to find some sort of ideals that might sustain them in a troubled world. The most important ideal presented was that of Stoicism. Stoicism approached social ideals from the standpoint of an individual whose social structure (the Greek state) had fallen beneath him.

Having no social order in which their ideals might rest, the Stoics fell back upon *nature*. This theory of nature as moral, as a right system of laws into which man's ideals must somehow fit, was refined and enlarged as man became more sophisticated and critical. It was neither the blind destiny of the ancient nor the social end of the state as with Plato, but a rational order opposed to the artificial conventions of man. A clear differentiation between man and

nature having been established, and the breakdown of Greek society after the Age of Pericles having demonstrated to a great many subtle thinkers that most of the sins of the world were due to social conventions created by man, the demand was heard on all sides for a return to nature. Nature came to be conceived as a vast system of morally right laws; and only by identifying himself with them could man attain his good. His rational nature was a part and parcel of this purposive nature, and by conforming to reason he would be conforming to nature. Real knowledge was uncorrupted by social conventions and values. Reason was the existence in man of divine nature, and all directions of conduct should come from it. Man's ideals thus became identified with nature—a purposive nature whose laws were right and which man must obey if he found his good. Sidgwick says of the Stoics that "the formula of living according to nature, in its application to man as a rational animal, may be understood both as directing that reason is to govern, and as indicating how that government is to be practically exercised."[1]

Having found the basis for man's social ideals in nature and the authority of nature for man in the use of his reason, the Stoics attempted to explain how these natural ideals should be interpreted in the *social relations* of man. Nature, or the world reason, had a social character. The realization of it in any particular man was such that is also realized the common good of all men. There was thus laid the foundation for the common rights of all men, but the difficulty of *defining* natural robbed them of all content. Nature could be taken to mean: (1) what actually existed every where; (2) what would exist if the original plans of man's nature were carried out. Struggling between these two extremes, the view gradually evolved that a negation of personality in the ordinary sense of the term, a certain apathy toward mundane affairs, and a cultivation of independence from family and state would more closely

[1] *History of Ethics*, p. 179.

identify one with nature and the right. All men are equal, but this equality consisted in the neglect of social activities, pursuits, and enjoyments. Thus while man's values were determined by the purposive rightness of a natural universe, the latter was so interpreted that it gave no content to empirical social ideals. The Stoic was an individualist in respect to social conventions and values; but he accepted, on the ground of nature, the authority of a reason identified with an eternal system.

Legal Authority.—Rome developed her ideal of legal authority out of the Stoic conception of nature. The social activity of the Roman Empire lay in its effort to regulate the affairs of the world through a legal system based on authority. The social ideal which it utilized as a justification of this procedure had two roots: philosophical and legal. These were fused in the following manner: The old Roman law was based on the Twelve Tables. It developed into the domestic law of the individual states, *jus civile,* and into the law which the federated states recognized in their relation to one another, *jus gentium.* But as Rome grew, foreigners came to her gates to barter and trade, and the old strict law for citizens could not be applied to them since they were not citizens. Since something had to be done, the jurists were called upon to make a decision. It happened that there were many jurists in Rome who believed in the Stoic ideal of nature. Having no comprehensive precedent in law for the treatment of foreigners, they fell back upon the notion that they would handle these cases as their reason dictated. Thus supplementing the *jus genitum* and the *jus civile,* there arose the *jus naturale,* a flexible law that treated all men rationally. This natural law became in time the prevailing legal ideal of Rome. As Windelband admirably puts it: "Out of the *lex naturae,* the universally natural law which is exalted above all human caprice, and above all change of historical life, develop both the commands of morality in general, and in particular those of human society—the *jus naturale.* But while Cicero proceeds to project from this standpoint the ideal form of

political life, the Stoic universal state takes on under his hands the outlines of the Roman Empire. Cosmopolitanism, which had arisen among the Greeks as a distant ideal, in the downfall of their own political importance, becomes with the Romans the proud self-consciousness of their historical mission. But even in this theoretical development of what the state should be, Cicero interweaves the investigation of what is. Not sprung from the consideration or the voluntary choice of individuals, it is rather a product of history, and therefore the ever-valid principles of the law of nature are mingled in the structures of its life with the historical institutions of positive law."[2] Thus the Romans regarded their law as the overt expression of the law of nature. Man's innate reason could recognize the values to be attained in the Roman legal structure which was the concrete and visible embodiment of the natural system. Nature justified legal authority.

A reactionary justification of legal and political authority occurred in the seventeenth century. As the social conditions of the time were destroying traditional authority, the moderns were seeking a new ideal by which men could live. However, Hobbes sought to re-interpret the old ideal in terms of the new conditions—to justify absolute power with a voluntary individual. If one gets back to a state of nature, a state in which he thought there were no social organizations, one will find a free individual seeking to realize his own selfish desires. Since, however, each man seeks to satisfy his own desires and to enhance his power, he finds himself in constant conflict with others bent on the same quest. So a state of nature is a state of war. The ultimate aim of each individual is self-preservation, and this aim is obviously impossible of realization in a state of nature where everybody is at war. Fear, therefore, institutes the state as a necessary evil. Men renounce certain rights (freedom) in order to get protection for certain others (security). But a government once set up

[2]Tuft's *Translation of Windelband's History of Philosophy*, p. 177.

becomes absolute. After the initial transfer of power, it is kept by might. Social relationships and morality are based on might which now becomes right. Men yield to legal authority as a matter of prudence because a state of nature is suicidal.

Economic Authority.—Capitalism centers its attention on the means by which human happiness can be attained. Its fundamental point is that the maximum of human happiness can be reached through each individual's looking out for himself. Each person should be rewarded according to his merit, and his merit must be discovered and evaluated through a competitive struggle for existence in which each stands on his own feet and in which there is to be the minimum of public control and interference. This ideal is based on the following ground: (1) that the Darwinian theory of evolution emphasizes the fact that all nature represents a competitive struggle for existence in which only the best fitted individuals survive; and (2) that such an individualistic struggle for existence represents the only way in which the meritorious will come to the top. Since this is an industrial area, individuals naturally center their attention on the acquisition of wealth.

Interpreting nature as an individualistic competitive struggle for existence, capitalism justifies enormous economic inequalities and the control of the many by the wealthy few. Nature is the basis for economic authority. Our present complex civilization cannot be carried on under any other system, and the present industrial system is the most efficient that the world has ever known. Capitalism rests on a natural ethics. It is right because it is an expression of natural law. Competition equalizes the struggle for existence and gives to each according to his merits. This is an expression of natural law and cannot be changed. All of us seek what happiness we can get in the environment in which we live. If we analyze this environment critically instead of sentimentally, we shall find that it can be changed but not at our whim. We must recognize our limitations as well as our possibilites. Our limitations are

the law of evolution, the struggle for existence, and the survival of the fittest. Our possibilities are that each can do his best, that he can be rewarded for what he does, and that he ought not to complain about the other fellow. We should be satisfied with natural economic inequalities.

II

Nature as the Foundation for Freedom

Freedom for pleasure.—"The naturalness of the view that pleasure is the only ultimate good," says Epicurus, borrowing an argument from Plato's pupil Eudoxus, "is shown by the spontaneity with which all animals seek it."[3] The significance of the system of Epicurus consists in two facts: (1) he looked upon individual pleasure as the natural end of life; and (2) he regarded morality and social ideals as means toward the realization of this end. The individual should acknowledge no authority, social, political, or otherwise, unless it gave him pleasure in so doing. The origin of political society and the validity of its laws were purely conventional and arbitrary. Societies were compacts framed by men to secure themselves against mutual agression. A proper interpretation of nature meant, on the one hand, participation in public life only on the grounds of individual pleasure; and on the other the general rule that he could be happiest who engaged his attention on his own pleasure, free of the social order. While making a distinction in kinds of pleasure, Epicurus insisted that nature revealed each person's feelings as the arbiter of his destiny.

Political Freedom.—When the men of the seventeenth and eighteenth centuries revolted against monarchy and the divine right of kings, they sought in nature a basis for political freedom. Locke was one of the typical exponents. He sought to establish the rights of the individual as primary, to demonstrate that the purpose of government was

[3] A. E. Taylor's *Epicurus*, p. 81.

to secure these rights, and rested his argument on the natural state of man. In order to understand political ideals and power aright one must consider man in a state of nature. In a state of nature men are *equal* and peaceful. They are governed by natural law which teaches them that, all being equal and independent, no one should harm another. In the law of nature there are two rights which are in the hands of every person. These are the rights to punish any crime that may be committed against oneself and to exact reparation for any suffering sustained. Every man is his own judge and executor. Men live together according to reason, without a common superior on earth, and with authority to judge between themselves.

If in a state of nature men possess the fundamental right of liberty, if this right is prior to social organization, civil and political societies must arise through voluntary contract. Although in a state of nature every man has a right to punish, this sort of thing is more efficiently done through a commonwealth. So "whenever any member of men so write into one society as to quit everyone his executive power of the law of nature and resign it to the public, there is a political society." The origin of society is in voluntary agreement, and its ideals must be formulated by the same process. Accordingly, the end of society, of political and civil organization, is the negative function of making secure for the individual those rights which he had in a state of nature.

Rousseau's famous war cry was that men are born free (in a state of nature) but that they are everywhere in chains (in a state of society). In a state of nature each follows his own feelings and impulses, and is happy. But natural liberty is limited on account of the strength of the individual; hence people come to sacrifice it for civil liberty. The social contract transforms us from individuals to a collective body called the state. What one loses by the social contract is natural liberty; what one gains in civil liberty by which one has not merely possession but ownership. The civil body should be governed by the general

will which is always right. The general will is not the will of the majority; it need not necessarily be the will of all; but it is the will we should have if we thought of the good of all. What makes the general will is not merely the vote (as in America) but that which genuinely represents the good of all concerned. Although Rosseau never gave any definite statement of just how the general will was to be realized, he was falling back on nature as the basis upon which political liberty could be justified.

Similarly, the founders of the American Constitution based their principles upon the philosophy of individualistic natural rights. It was to be a government that was to protect certain natural rights; this was its sole business, and its framers saw to it that it should do as little positive work as possible. The idea seemed to be that the social order (as a political structure) was an agency whose sole function was to preserve each individual's natural rights which would independently bring happiness.

Economic Freedom.—Socialism argues that a proper interpretation of nature shows that its competitive aspect need not apply to man. The struggle for existence depends upon competition only when there is a competitive environment. In the case of many insects, such as the ants, and clearly in the case of man, the natural environment is coöperative. No man lives alone, and only in so far as he can coöperate will he survive. The capitalistic ideal is anti-social; whereas only a pre-social ideal is natural and can furnish the foundation for happiness.

Men being by nature social and coöperative, they must be economically free in order to realize their ideals. The economic goods of life must be socially used. Public service rather than the desire for gain is the best motive to get men to work. The best government is that which can most successfully govern most. Equality of opportunity can never exist while complete private ownership exists in land and other monopolies. While there may be some doubt among social thinkers as to the best means of securing economic freedom, all agree that an examination of man's nature reveals this step as a necessity.

III

Nature as a Priori and Experimental

One of the striking characteristics of the use of nature as the foundation of social ideals is that it has been made the basis for a great variety of values. It has been the support of both liberty and authority. It has justified intellectual freedom and state censorship; it has been the support for participation in and withdrawal from the social order. By means of it both democracy and autocracy have been advocated; economic inequality and economic freedom have been contended for; and individual pleasure and social duties have been urged. If one seeks an explanation of the reason why various, and often conflicting, ideals have been established upon the concept *nature*, he will probably find it in the changing social, economic and geographic conditions of people. Plato and Aristotle were gentlemen of the upper class, born and nurtured in the highest Athenian culture. They lived in a time and country where society esteemed and valued the things for which they stood. They interpreted their values in terms of the social order in which they lived. With the Stoics, however, the Grecian social order no longer functioned. The people of Greece were in the hands of a foreign authority. The social ideals of Plato and Aristotle having failed and the Roman social structure being unable to assimilate them, the Stoics had to go beyond a positive social organization for their ideals. Hence they despised social conventions and practices, and sought their ideal in the form of rational contemplation which they felt identified them with the natural world. The Roman Empire when fully organized ushered in a new set of positive social values. It was successful. It had authority. It controlled the world. It secured its values through ingenuity, skill, and force. Thus finding itself in possession of the legal authority of the world, it sought in nature a justification of its ideal.

The capitalistic ideal of economic authority grew out of

the industrial revolution and political individualism. The industrial revolution initiated an era that placed untold economic power in the hands of mankind. It enormously increased production. It centered attention on the means of acquiring wealth and economic power. Added to this, political individualism gave to individuals the freedom necessary for the exploitation of economic resources. Every man was to be given equal political opportunity. Competition and free contract were to be the guides of men in their pursuit of wealth. Political revolutions gave men free hands. What they secured by their own efforts was to be theirs. As a few gradually secured more than the many, they justified economic inequality on the basis of nature.

Similarly freedom was developed in times and conditions where there has been a distrust of authority. The rise of political freedom in the seventeenth and eighteenth centuries is an illustration of this point. The people were then on the defensive. With the people of 150 years ago property was a natural right because foreign oppression was trying to confiscate it. Taxation without representation is tyranny. The unrest of the day was caused by political oppression of governments that based their authority upon the divine right of kings, and the people whom they oppressed most and who reacted most violently were the well-to-do middle class who felt that they were being unlawfully deprived of their property and liberty. So they revolted, and set up the ideal of political liberty and equality, based on nature.

Economic freedom arose out of industrial conditions, not dreamed of by the founders of political freedom. Wealth and power became concentrated in the hands of a few. Although the world was richer by far than it has ever been before, there was as much poverty in the latter part of the nineteenth century as at any other time. Moreover, the new economic power gained control over the everyday affairs of all the people far more effectively than did the old political power. Realizing that the laborer had an important share in production and having political freedom (at least in theory) as a precedent, many men began to

set up the ideal of economic freedom. Economic freedom truly expressed man's nature.

If it be assumed that man's ideals are relative to social, economic, political, and physical circumstances, it yet remains true that men have held to them tenaciously on the ground that they rested on the ultimate—in nature. Nature is the *a priori* of social ideals. It is the absolute, the eternal and abiding structure upon which everything else is built. If history reveals the relativity of social ideals, it with equal force reveals their immutable character for the people who hold them. The *a priori* feature of social values is derived from the fact that men's ideals represent the things which they consider fundamental. Liberty, equality, and fraternity were natural rights because to the people who held them they stood for certain fundamental interests for which rather than give up they would die. To the socialistic economic freedom is so important, so fundamental, and so true an expression of nature that nothing else matters. Likewise, the capitalist is willing to engage in gigantic wars rather than give up the principle of private property and economic inequality. All of us see nature in terms of what we deem fundamental; and we deem fundamental those things which we want. All else in "convention."

The inconsistency between the relativity of social ideals and the immutable support which is usually given them is not so glaring as one might be tempted to infer. Ideals for which there is an *a priori* basis and which rest upon an absolute nature are solid and secure. They put order and stability in social organizations. People believe in them sincerely and fight for them valiantly. Regarding them as the most intricate part of their lives, men develop a strong emotional attachment to them. They have contributed much to the civilization of the world. The weakness of this sort of ideal, however, is that it stands for something fixed and does not admit of compromise. It cannot meet new conditions. Fixed ends bar the way to progress; for they outstay their use. They either divert attention to a distant goal which may lead to indifference to present affairs or

else they block the realization of other values that may conflict with them. As long as the literal interpretation of the Bible is an incommensurable value, the scientific study of the origin and development of man and the formulation of values on the results is impossible. As long as insanity is regarded as unclean, mediaeval research and the values arising therefrom are thwarted. Fixed ends are chiefly concerned with self-protection, set up institutions to keep them alive, and busy themselves attacking other values that may threaten their existence. An immutable nature supports conflicting and ultimately inoperative ideals.

An experimental attitude toward nature and the ideals built upon it would conceive neither man nor nature as ready made. We live in a world over which we can have some control and which in turn exercises some control over us. Our values must be formulated not only in terms of what we want but also in terms of what we can get. In the past too much attention has been concentrated upon what we want; what is needed is a clearer understanding of what we can get. Ends which work must consider the best means for their realization. Scientific method is the best instrument available for the statement and realization of ends. Scientific method does not necessarily tell us what ends we shall have, but it does give the conditions for their realization. It state that all the facts must be taken into account and that everything involved must be considered. It gives no guarantee that a given end will be realized, but neither does it say that things must remain as they are. It simply offers the best conditions for the realization of values. Scientific method is the extraordinary agency by means of which man can most effectively exercise control over nature and most clearly perceive his limitations. It enables a people to construct ends that will operate.

Ideals based on *a priori* nature are static; those based on experimental nature are dynamic. A spirit of adventure and growth and progress is impossible in any set of ideals whose foundation is an *a priori*, immutable nature. The fundamental thing about nature is that it is always chang-

ing. The important attitude toward it is the experimental which seeks to discover the best values under given circumstances, knows when to modify them or give them up, and when to adopt new ones. Ours is a changing world, and the true sportsman is he who can ride the current, not he who clings to the bank.

SOME PLANS FOR COLONIZING LIBERATED NEGRO SLAVES IN HISPANIC AMERICA

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The Act of the Federal Congress to confiscate property used for insurrectionary purposes, approved by the President August 6, 1861, had liberated a certain number of negro slaves. In the annual message to Congress, December 3, of that year, President Lincoln called attention to the new problems created by this act. He held that these freed negroes were dependent upon the United States Government and had to be provided for in some way. He frankly expressed the belief that the problem was likely to be aggravated in the near future. Several commonwealths would very reasonably follow the example of the Federal Government and liberate their negro slaves. "In such a case I recommend," he advised, "that Congress provide for accepting such persons from such states, according to some mode of valuation, in lieu, *pro tanto*, of direct taxes, or upon some other plan to be agreed upon with such states respectively; that such persons, on such acceptance by the general Government be at once deemed free, and that in any event steps be taken for colonizing both classes (or the one first mentioned if the other shall not be brought into existence) at some place, or places in climate congenial to them. It might be well, too," he continued, "to consider whether the free colored people already in the United States could not, so far as individuals may desire, be included in such colonization." And he concluded: "To carry out the plan of colonization may involve the acquiring of territory, and also the appropriation of money beyond that to be expended in the territorial acquisition. Having practiced the acquisition of territory for nearly sixty years, the question of constitutional power to do so is no longer open to us."[1]

[1]Richardson, J. D., *Messages and Papers of the Presidents*, Vol. VI, pp. 54-55.

The colonizing of liberated colored people became, after it had been thus dealt with by the President, at once a very important subject. Congress responded by appropriating several thousand dollars and empowering the Federal Executive to begin a policy for the colonization of this new class of people. Mr. Usher, Secretary of the Interior, was intrusted with the duty of carrying out the administration's new policy. The itemized statement given by him to Mr. Wade, Chairman of the Committee on Territories of the United States Senate, showed that about $33,226, or 97 per cent of the amount appropriated by Congress, had been expended by March 7, 1864.[2] This amount would not indicate that the scheme, or schemes tried had been very successful. That the success of the efforts to colonize liberated negroes in Hispanic America was very limited indeed will become plain as we proceed.

The colonization of freed negroes became a subject for diplomatic concern early in the year 1862. Mr. Seward, Secretary of State, was anxious to have an international conference called to deal with the whole subject. In an official note to the ministers of the United States near to the governments of Great Britain, France, Holland, and Denmark of September 30, 1862, he stated that many free negroes residing in the United States had informed the President that they desired to emigrate to foreign countries provided the necessary guarantees were assured them. He was of the opinion that the number of such negroes would continue to increase. He informed the ministers that countries in the tropics and some of those who had colonies or dependencies in those regions had expressed a desire to secure such immigration. He had, therefore, been authorized by the President to enter into negotiations with the governments of these foreign countries. He did not propose a project for a convention, however; but explained some of the general principles which the United States Government thought

[2] *Senate Mis. Doc. No. 69*, pp. 1-2.

proper to be included in any treaty or treaties which might be negotiated dealing with this kind of immigration. He desired the ministers to ascertain the views of the governments near which they served, and to inform him of the results. If the proposition was favorably received by these governments, they, the ministers, were to request suggestions; and if any were given to forward them to Washington. In due time they would be furnished with a project for a conference. Seward made it plain, however, that the United States Government would not give to any country a monopoly of the proposed emigration "but to open its benefits on equal terms to all States within the tropics, or having colonies there, which, maintaining free constitutional governments, shall desire these benefits." If treaties were proposed, it was suggested that they be made to continue in force for ten years, or abrogated in accordance with the terms agreed to.[3] Mr. Charles Francis Adams, United States Minister at the Court of St. James, in an official note to Seward in reply to the note of September 30 of October 30, gave an account of an interview which he had had with Earl Russell. "I gathered from what he said," wrote Adams, "that the whole matter had been under consideration with the ministers for some time back, and that the Duke of Newcastle had had much correspondence with the authorities in the West Indies about it. The conclusion had been that on the whole it might be the means of entangling them in some way or other with the difficulties in the United States by possible reclamation of fugitives or in some other way or danger which they were most desirous to avoid. Hence they should not be inclined to enter upon negotiations, and least of all to adopt the form of a convention."[4]

The attitude of the other three countries was similar to that of Great Britain; and the plan had to be abandoned.

In the meantime the Central American Republics had

[3] *Diplomatic Correspondence of the United States, 1862*, pp. 202-204.
[4] *Diplomatic Correspondence of the United States, 1862*, pp. 227-228.

gotten wind of the proposed plans. The reaction was vigorous and definite. Expressions of grave apprehensions of the proposed act of the United States Government came from all the governments of that region. The thought of a large wave, or waves, of negro immigrants was in no wise pleasing to these countries. The diplomatic representatives of these republics voiced their feelings in plain terms.

On August 26, 1862, Señor Yrissari, Minister of Guatamala and El Salvador at Washington, in an official note to Seward, called attention to the speech of President Lincoln on the fourteenth of that month to a group of colored people.[5] In the speech the President had suggested the establishment of a colony of freed negroes in Central America. Yrisarri informed Seward that "in those two republics no kind of colonization of foreigners, whether white, black, or any other color, is allowed without special permission from the respective governments, the colonists being held to the fulfillment of such conditions as it may be thought proper to impose upon them."[6] To this note Seward replied in an official note of September 6 that "if the Government should at any time hereafter find it desirable to effect such a colonization in any foreign country, the first proceeding to that end which would be taken would be a frank and literal application to that country for its consent, and if such consent should not at once be cheerfully accorded, the purpose would be promptly and unreservedly relinquished."[7] On the ninth of the same month, Yrissari replied to this note to the effect that while the two republics desired immigrants, they, like the United States, desired colonists of an acceptable type and quality. He added that he had been instructed by Señor Don Pedro Zeledon, Minister of Foreign Affairs of Guatemala and El Salvador, "to take suitable steps toward averting from Central America the evils which are apprehended there from such colonization." He also stated that he was pleased with the spirit and equity

[5] *Ibid.*, 1862, p. 884.
[6] *Diplomatic Correspondence of the United States, 1862*, p. 897.
[7] *Ibid.*, 1862, pp. 897-898.

manifested by the United States Government; but added significantly, "nor was less to be expected from a government which professes the principle of respecting the unquestionable rights of all nations, without making any difference between the most and the least powerful."[8] On the fifteenth of the same month, Seward declared in an official note to Yrisarri that agents recognized by the United States Government for the purpose of colonizing freed negroes would not attempt to colonize in any country without the consent of the country in whose territory colonization would be desirable had been received. He concluded with the statement that he would take Yrisarri's note as "a definite expression of the purpose of these two republics not to receive and protect such settlements."[9]

Zeledon, in an official note to Yrisarri on July 29, had instructed him to inform the Government of the United States that every effort to establish a colony of freed negroes on the territory of Nicaragua would be vigorously opposed. He added: "The introduction into Nicaragua of such racial elements would be lamentable and dangerous." Such a scheme would be especially objectionable because it was to be under the direction of a foreign nation; and because of the degraded character and large number of the negro population of the two republics.[10]

Señor Molina, Minister of Costa Rica, Nicaragua, and Honduras in Washington, in an official note to Seward of September 19, 1862, stated that he had been unable to to see him on his last visit to the State Department; but that he had had an interview with the Assistant Secretary of State. From him he had learned that Senator Pomeroy had been commissioned by President Lincoln to proceed on a visit to several points in the West Indies, Central, and perhaps, South America, for the purpose of finding a suitable place for a colony of freed negroes. The senator had not, Molina admitted, been given powers to negotiate

[8] *Ibid.*, 1862, pp. 898-899.
[9] *Diplomatic Correspondence of the United States, 1862*, p. 900.
[10] *Ibid.*, 1862, pp. 899-900.

with any government. Molina felt, however, that there must be some misunderstanding for the views of the Assistant Secretary of State and those of the senator did not seem to coincide. Molina had before him as he wrote his note a pamphlet written by the senator with the title *Information for Persons Proposing to Join the Free Colored Colony of Central America.* In this document Pomeroy stated that he would leave for ports of New Granada and possibly Honduras and Venezuela on or about October 1, 1862. Molina, therefore, requested Seward to give him detailed information of the proposed voyage of the senator. He concluded with the statement that he had been instructed to protest and now did protest against any scheme of colonization whatsoever in the republics having to do with freed negroes.[11] Seward replied on the twenty-fourth of the same month explaining the nature and purpose of the acts of Congress and of the plan of the Government to put them into effect. He understood, he continued, that the Secretary of the Interior had commissioned Senator Pomeroy to act as the agent of the freed negroes who desired to become members of such colonies as were contemplated; but he added that the senator had also been instructed not to attempt to found colonies in a country which refused to permit the establishment of such colonies. And he concluded with the promise that "your protest is accepted by the President as denial of such consent on the part of the three states you so worthily represent."[12]

These definite expressions of the position of the Central American Republics caused Seward to further explain the plan of the United States Government. He made plain the fact that there would be no effort to force the freed negroes to emigrate. "The free negroes of the United States enjoy," he wrote in his note to Mr. Riotto[13] of June 4, 1862, "the right of remaining within the Federal Union, and the right of emigrating from it whithersoever to them may seem

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[11] *Diplomatic Correspondence of the United States, 1862*, pp. 900-905.
[12] *Ibid.*, 1862, pp. 905-906.
[13] Mr. Riotto was United States minister to Costa Rica.

best. The Government of the United States exercises no power or influence in determining their choice. Congress has made a small appropriation to enable the President to assist such as may choose to colonize in foreign countries. That appropriation will be expended under the direction of the President, in accordance with the views of Congress." And he added that if the governments of foreign countries invited negroes to colonize in their territories the United States would guarantee that the conditions agreed to would be complied with.[14]

The information sent by other ministers of the United States to the different Central American Republics corroborated the views presented by the diplomatic representatives, as referred to above. Such were the reports of Messrs. Crosby, Partridge, and Dickinson, the ministers to Guatamala, Honduras, and Nicaragua, respectively. There can be no doubt about the genuineness of the fears felt on this head in Central America. The prospect of 4,000,000 freed negroes immigrating into their territories was cause enough for the misgivings entertained by their governments.

The minister from the United States to Hispanic American governments to whom this whole scheme for colonizing freed negroes appealed most strongly was General James Watson Webb. Webb was the minister near to the court of the Emperor Don Pedro II of Brazil from 1861 to 1869; and was by training and experience one to whom the general welfare of the negroes was of special interest and concern. He had during his long and eventful journalistic career—he had become editor of the *New York Courier* in 1829; had bought the *Enquirer* in the same year; and had merged the two papers under the title *The Morning Courier and New York Enquirer;* and had remained editor of this paper until 1861—given much time and study to the whole subject of negro slavery. He had even published a book on the subject with the title of *Slavery and Its Tendencies.* It was therefore to be expected that he would give much time and

[14] *Diplomatic Correspondence of the United States, 1862,* p. 884.

thought to the conditions of negro slavery in Brazil. As soon as President Lincoln's annual message reached him in Rio de Janeiro he became greatly interested in the solution of the problem therein stated. On May 20, 1862, he wrote a long dispatch to Seward dealing with the negro slavery question in Brazil; and described in detail a plan for colonizing freed negroes from the United States in that Empire.

He made seven observations which he held should guide those who would solve the problem of what to do with the freed negroes in the United States:

These were:

1. It must be assumed as a fact, conceded by all parties, that if we may emancipate, we must also be at the expense of colonizing the negro.
2. If we give to the slave freedom, it is not only the right but the duty of the government to accomplish the object at the least possible expense to the people.
3. Freedom being the object in view, the true philanthropist does not insist that it shall be immediate.
4. The object to be attained being freedom of the slave, the time when is a secondary consideration; it being understood that it shall not be unnecessarily delayed.
5. To make freedom available and conducive to the happiness of the slave as well as desirable, a probationary state of "apprenticeship" may become in most cases an absolute necessity.
6. The expense to our Government of colonizing the freed slaves should be reduced to the smallest sum, and, if possible, his colonization, should be at his own expense, and our Government be altogether exempt from the burden.
7. I suppose that if the question were put to the people of the United States, whether they would willingly incur an expense of $100 per head in colonizing the freed negro, the response would be "aye," and the feeling would be universally in favor of their expatriation to some place where they would cease to have any political connection with our country.

In elaborating upon each of these Webb dealt, very naturally, with the differences between negro slavery in the United States and Brazil. This difference he held to be due to the fact that the supply of negro slaves for the two countries came from two very different sources. Those which had been brought to the United States and the West Indies were taken from the west and southwest sections of Africa.

Those for Brazil were brought from the east and south of the same continent, in *Minas*. Those brought to the United States and the West Indies were fairly well suited for slaves, while those brought to Brazil were particularly ill-suited for such purposes. The latter class lacked the degree of ignorance and docility essential in good slaves. Its members possessed a much greater degree of native intelligence, were fierce, warlike, and intellectual. They were "ready for insurrection and capable of extensive combinations and conspiracies to effect their liberation." Webb called attention to the slave insurrection which had recently broken out in Brazil as an excellent example of that fact. He further explained that it was very generally recognized that there existed in that country a very dangerous condition which might result in slave insurrection breaking out at any time in greater fury than ever. He claimed that negro slaves in the United States were on the increase, while in Brazil they were decidedly on the decrease. The reason for the decrease in Brazil was the deliberate practice of infanticide, and the deliberate effort of birth control practiced by slave mothers. It is only fair to note here that figures bear testimony to this decrease of slaves in Brazil. In 1850 there were about two and a half million negro slaves in the Empire, while in 1871 there were only about one million and a half, or a decrease of about one million. While the last date is almost ten years later than the time of writing this dispatch, Webb's assertions are strengthened by these figures.

Webb also dealt in some detail with the seriousness of the labor situation in Brazil. Free labor was very scarce and very difficult to obtain. The decrease in slave labor was only aggravating the entire labor situation. Slave labor had also become more and more expensive. The price of a good slave had greatly increased in value. The larger the need of negro slave labor in new and growing industries had its share in this acute state of affairs. The growing interest, for example, in coffee culture and in the allied

industries in the southern provinces was draining the northern provinces of their slave labor, and at the same time raising the price of desirable slave labor.

Webb had a definite plan to propose for remedying the situation in Brazil. He proposed to bring freed negroes from the United States to that country, believing that by doing so, the whole labor situation in Brazil would be greatly improved. He was more especially concerned with the conditions in the northern provinces. The shortage of slave labor there was especially pronounced. To Webb the solution for this condition of things was the immediate introduction in that section of free negro labor from the United States. With a suitable labor supply in these provinces, he held, the "undeveloped resources could afford employment of all the unemployed labor of the world, and in time render Brazil the richest and the greatest among the kingdoms of the earth." "They cannot be redeemed and cultivated by white labor," he claimed; and continued: "The African slave trade can never again supply negro labor alone suited to the region; and white labor is quite out of the question." He concluded: "Free negro labor, then, is the only possible mode of averting from Brazil the great evil with which she is threatened, and in the gradual but certain approach of which does not appear to have awakened generally the anxiety and alarm it is so well calculated to excite. And the great author of all good appears to have placed within the grasp of Brazil the remedy which of all others is alone calculated to avert from her the threatened evil."

Webb next turned his attention to the method of bringing about his scheme of colonization. A treaty should be negotiated between the United States and Brazil. It should provide for the transportation by the United States Government at its own expense all its liberated negroes to the valley of the Amazon. Brazil, on her part, should provide them with lands free of charge. This she could easily do if she would "only give freely of her *wild lands*, now utterly valueless to her, and forever to remain so, unless she places

upon them the proper laborer for their cultivation. And if that laborer is to become a citizen of the Empire, so much the better for her future prosperity and greatness." In addition Brazil was to guarantee to the immigrant the opportunity to become a citizen of the Empire after a term of years, with all the rights and privileges of the free negroes of the Empire. This would enable them to become the equals of the white men, and equally eligible with them to the highest offices of the Empire. There were in Brazil, Webb observed, no constitutional obstacles to such political progress for the negro. He also pointed out that such a condition would work toward social equality as well for the distinction between the whites and the negroes had almost been eradicated in that Empire. "On the bench," he explained, "and in the legislative halls, in the army and the navy, in the learned professions, and among the professors in her colleges, as also in the pulpit and in the social relations of life the woolly-headed and thick-lipped descendants of Africa has his place side by side with the 'white brother' in Brazil, and not unfrequently he jostles him for his position."

Brazil would be willing, Webb felt, yes, even anxious to enter into treaty relations with the United States in a matter that promised to be so distinctly advantageous to her. She fully realized that the conditions in the northern provinces demanded immediate improvement. He felt sure that she would be willing to pay $250 per head for 50,000 Africans in order to supply the demand there for laborers. This would cost her $12,500,000. But if she could secure the necessary laborers from the United States without direct monetary cost, would she not readily agree to the plan? The 50,000 freed negroes from the United States would be worth double that number from Africa. The fear that she had of slave insurrections would readily be allayed by the arrival of the freed negroes from the United States. And Webb would be able, he explained, to offer Brazil ten times 50,000 or 500,000 freed negroes.

Webb also claimed that his plan was a perfectly feasible

one. It ought to be and he felt that it would be considered so by philanthropists and capitalists and by the governments of the two countries. Brazil would be willing, he felt, to set apart a tract of land in a healthful region near the Amazon; that she would be willing to give 100 acres to each immigrant; and that a proportional amount of land would also be given to each child born to the immigrant during the period of apprenticeship. Only about a fourth of the total amount of land, he stated, should be given to the immigrant. The remainder should belong to the company which he felt should be organized to put the plan into execution. This company should defray the expenses of the developments on the land during the period of the apprenticeship of the laborers. He felt that the plan should also appeal to the Government and the people of the United States. It ought to take away from that country its negro population as rapidly as it was freed. The cost of the transportation by the United States Government of these freed negroes to the place, or places to be designated by the Imperial Brazilian Government, was to be paid by the negro during his apprenticeship period. And Webb grew eloquent over the apprenticeship feature of the plan. In reality it was, he claimed, the most important feature of his whole plan, for it would give to the free negro "the probationary education so necessary to enable him to enjoy freedom and become a useful citizen of a great Empire." And he added: "It is not only in the interest of the United States, and absolutely necessary for her internal tranquility, but, in consequence of the prejudices of our people against the African race, it is indispensible that the liberated negro should be transported beyond our borders, because he can never with us enjoy social or political equality." He concluded: "The fruit is ripe and only awaits the plucking. The President of the United States has only to say the word, and the initiative of a great work will be taken, which, in its results, cannot fail to confer incalculable benefits upon the United States, Brazil, and millions of the African race."

Webb also included a memorial which he had prepared

and which he called *On the Necessity of Supplying Brazil with Labor, and the Policy of Procuring Free Black Labor from the United States.* It is largely a repetition of what has been given although in a somewhat different form. An excerpt from it will illustrate its nature and its importance:

> Only let it be understood that the matter can be so arranged that the liberated slave shall, by a wise direction of his energies, *be made to pay for the transportation to his new home and his education for the discharge of the duties of a freeman.* The whole subject is one of the greatest magnitude that ever occupied the thoughts, or called forth the energies of man, and wisely cared for, under the providence of God, cannot fail of success. It is quite impossible that in a case where the giver, the receiver, and the party or thing bestowed, are all to be palpably and immensely benefited—where injury cannot possibly result to either and where there can be no rivalry or jealousy, and where good only, and the greatest good, must accrue to all—it is impossible, I say, that where such are to be the fruits of a possibility. And such is the project of negro colonization from the United States to Brazil, his education there at his own expense, and his becoming a free citizen of a great Empire. The United States will be blessed by his *absence*, and the riddance of a curse which has well nigh destroyed her. Brazil will receive precisely the species of laborers and citizens best calculated to develop her resources and make her one of the great powers of the earth and the miserable, ignorant, and down-trodden slave, who is now a mere *chattel* with body and soul alike uncared for, will have his shackles knocked off, be liberated, educated for freedom, and have bestowed upon him the great boon of personal liberty."[15]

In his official dispatch to Webb of July 21, 1862, Seward replied to the dispatch of May 20 at some considerable length. He commended Webb for his great zeal in the solution of the problem that had arisen; and for the very able suggestions which he had sent to the State Department. But Seward informed him that the President could not accede to his wishes for powers to negotiate a treaty with Brazil such as he had suggested. He reminded him of the fact that the slavery question was still the *experimentum crucis* in United States politics, adding that: "Slavery is the cause of this civil war, and debates upon the present treatment and ultimate fate of slavery give to its abettors

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[15] *Diplomatic Correspondence of the United States, 1862*, pp. 707-709.

and to the government which is engaged in suppressing it much of their relative strength. Their relative weakness results from the same debates." The question whether slavery was an eradicable evil was yet an open and a much discussed one in the United States. He explained that there were many phases of the whole slave problem that had not been satisfactorily dealt with. In what manner and by what means and by what process was slavery to be ended? Should the abolition be immediate or gradual, with or without compensation? If by compensation, who should pay it, and how much should be paid? What should be done with the liberated slaves? If they were to be colonized, how, where, and by whom? These were questions, he held, that had not been solved; and that demanded the best efforts of all persons interested in their proper solution. It could not all be done by the executive department for, practically speaking, this department cannot lead it, it must follow the popular will. But there was hope of a worthy solution because the national mind was every day more and more earnestly directed to this complex problem. He believed that the solution of the problem "in all its branches is therefore near at hand, but no human wisdom can foresee through what new political changes, affecting the subject, the Nation is to pass before reaching that solution, and how not only the policy to be at any time adopted with a view to ultimate results, but even the results themselves, are to be affected by such changes."

Seward then reviewed what had already been done to solve the problem. The United States had decided that slavery should not henceforth be extended under its flag; that the African slave trade would never be revived or renewed; that slavery was forever abolished in the District of Columbia; that slaves escaping from disloyal masters must be forever free and should be considered as laborers of the Government of the United States and their families dependent upon the same power. He did not agree with Webb that the number of liberated negroes was large enough at that time to warrant the President giving the serious

attention to the plan of colonization as Webb desired. Seward held that until the public mind had evolved some definite plan the whole question under discussion would have to remain in abeyance. "It is a truism," he concluded, "that most governments seldom, and republican governments least of all, practice sufficient foresight to provide prematurely for future but not imminent emergencies."[16]

This was final for Webb, and although he continued to have an interest in the problem, he never repeated his request, so far as is known, for power to negotiate a treaty such as he had outlined to Seward. He alluded to the subject of colonization of the freed negroes in dealing with the need of recruits for the Brazilian army in the Paraguayan war. Nothing apparently came of it.

The two plans, the Seward Plan and the Webb Plan, which have here been dealt with in their diplomatic setting, failed largely because they were both too comprehensive, even fantastic for their day. They show, however, the need, clearly recognized at the time, for solving one of the many problems already growing out of the Civil War in the United States. It is to be regretted, at least for academic purposes, that it is not possible to know what the attitude of the Brazilian Government, and especially that of the august Emperor, Don Pedro II, would have been had the plan been submitted to it.

Toward the end of the great conflict the subject of the migration of planters with their slaves from the United States did become a matter for diplomatic concern between the two countries. The result was that some of the southern planters migrated to Brazil. It is, however, difficult to determine the number of those who took advantage of this opportunity. There is reason to believe that the number was small and this migration cannot be said to have had an appreciable effect upon slavery in that country. Negro slavery was doomed even in Brazil, although it was

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[16] *Diplomatic Correspondence of the United States, 1862*, pp. 712-715.

not definitely abolished until 1888. In conclusion, it is interesting to observe that Webb in his prophecy for the abolition of negro slavery in Brazil came within four years of being correct. He prophesied that it would be abolished within thirty years from the time he wrote his famous dispatch to Seward.

TEXAS LEGISLATION, 1925

OCTAVIA F. ROGAN
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I. TREATMENT OF THE PLATFORM

The Democratic Platform fared well at the hands of the 1925 legislators. Appropriations were kept within the constitutional limits notwithstanding the deficit inherited from the previous administration, and no new taxes were levied. The Ku Klux Klan was unmasked, but the bill requiring the registration of secret society membership was not passed. The Federal child labor amendment was promptly rejected, and the present State child labor law was strengthened. The planks demanding the strengthening of the prohibition laws, including the filing of certain liquor prescription records, and the making of rules of practice and procedure by the Supreme Court failed to be embodied into laws.

II. CONSTITUTIONAL AMENDMENTS

Four constitutional amendments were passed. One permits officers of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States, and enlisted men of the National Guard, the National Guard Reserve, and the organized Reserves of the United States, to hold State and Federal offices. A second eliminates the constitutional provision authorizing the Legislature to create special school districts. A third abolishes the Board of Prison Commissioners and provides supervision and management of the system under such laws as may be enacted by the Legislature. A fourth provides for taxation of school lands owned by counties, to the same extent as land privately owned. All amendments will be voted on at the next general election in November, 1926.

III. Reorganization of Departments

The movement for reorganization and consolidation of departments was reflected in the abolition of the Warehouse and Market Department as a department and placing it with reduced appropriations under the State Department of Agriculture. On the other hand, new agencies were created. The old Pardon Board, which had lapsed for four years, was revived. Three district courts, one for Dallas County, one for Bowie and Red River Counties, and one for Garza, Lynn, Dawson, Gaines, Yoakum, and Terry Counties were created as well as the Eleventh Supreme Judicial District Court of Appeals, located at Eastland. Though not a separate agency, a commission of two lawyers to aid the Court of Criminal Appeals to catch up with its docket was created. The two new judges sit with the Court of Criminal Appeals at hearings and in consultation. Their opinions must be approved by the court and when so approved become the opinions of the court. The life of the Commission of Appeals, an adjunct to the Supreme Court, was extended to 1931. Carrying out the recommendations of the Eleemosynary Commission authorized by the last Legislature to make a survey of the State eleemosynary institutions, two psychopathic hospitals, or receiving stations, were established, one in Galveston, in connection with the State Medical School, and the other in Dallas, where the Baylor Medical School is situated. As no appropriations were made, these hospitals cannot be built for the present. The names of the present institutions for the insane, the epileptic, and the feeble-minded were changed to "State Hospital" or "State School," preceded by the name of the city or town in which located. Temporary treatment in such institutions for thirty days upon the certificate of two physicians without, if desired, a trial by jury is permitted. This provision does not apply to the criminal insane. The Board of Control through its agents and institutions may develop a mental hygiene clinic service for coöperation with the State Department of Public Instruction and local boards

of education in the study of the mental and physical health of children. The purpose of the law is to provide proper treatment at all stages, to cure cases in the incipient stages, and to consider persons affected by this act as ill rather than criminal. This act is from the social viewpoint the most constructive in the 1925 *Session Laws*.

Another law establishes machinery by which insane veterans of certain wars may be delivered to Federal hospitals. This will help to take the insane out of jails and also relieve somewhat the crowded conditions at the State hospitals. The buildings of the old blind ayslum in Austin are to be used for the senile insane until 1926, and will then be turned over permanently to the University of Texas.

IV. Prison Reform

Two prison reform laws were passed in addition to prison financial measures. The indeterminate sentence law was amended to allow parole for convicts with good prison records after serving the minimum sentence where the maximum sentence is not four times as great as the minimum sentence, or where the convict has served one-fourth of the maximum sentence where the maximum sentence is greater than four times the minimum sentence. Greater restrictions were imposed regarding trusty convicts.

V. Public Safety

Two public safety laws were passed. The anti-pollution law was strengthened so as to forbid draining crude oil and other substances into streams which injure health and destroy fish life. Passenger elevators must be equipped with safety devices.

VI. Education

Among the education laws the textbook bill attracted the greatest attention. The apportionment of funds for the

purchase of free textbooks was reduced from 15 cents on the $100 valuation to 7 cents. The Textbook Commission Law was rewritten providing, among other things, for the gradual introduction of textbooks in order to eliminate the wholesale destruction of old books, limiting the number of textbooks that may be bought in a year, limiting the meetings of the board to one each year, and providing for the inclusion of a business man on the Commission. Certain persons already teaching may continue teaching without a certificate and others may be automatically granted a first grade certificate. The life of the Education Survey Commission was extended two years. Two new features of the rural aid law appropriating a million and a half dollars annually prohibit State aid to: (1) Districts having indebtedness other than bonded indebtedness (effective September 1, 1926) and (2) schools contracting conditionally to pay one salary in case of aid and a different salary in case of no aid. Among the other education laws are included the inspection and standardizing of certain colleges of the first class by the State Department of Education and the formation of rural high-school districts. Oil royalties hitherto going into the University of Texas permanent fund are now to be paid into the building fund.

VII. Highways

The most important highway bill passed gives the State Highway Commission jurisdiction over all State highways as to construction and maintenance, and makes the Texas highway construction regulations conform to Federal regulations and will thus enable the State to continue receiving Federal aid. Four other highway laws prohibit cut-outs, permit the sale of gasoline on Sunday, require highway officers to wear uniforms, and regulate glaring headlights. Intensive road building is responsible for the law creating liens in favor of those furnishing material and labor to contractors on public improvements.

VIII. Railroads

The law granting railways the right of eminent domain for the construction of spur or industrial tracks designed to serve industrial enterprises, the most important law affecting railways, is expected to receive a test in the United States Supreme Court by the Texas & Pacific Railroad which disputes the right of another railroad to enter its territory and build a spur track from Hale into Cement City. Gasoline and electric motors operated by railroads are now considered trains, and the jurisdiction of the Railway Commission was extended to include passengers and freight traffic handled by them. Right of appeal from orders of the Texas Railway Commission to the district court of competent jurisdiction in Travis County was provided, but the Commission must be given the opportunity of a hearing before being temporarily enjoined. In erecting bridges and other constructions tracks must clear twenty-two feet above the rails and eight and one-half feet on both sides from the center of the tracks.

IX. Banking

State banks may change from the guaranty fund to the bond system and thus escape the liabilities of the guaranty plan assessments. A related measure repeals the requirement of bonds in an amount six times the total of the capital stock to cover deposits. A fine of not more than $2,500 or imprisonment in the penitentiary two years or by both such fine and imprisonment is the penalty for making false statements about banking institutions. The bad check law makes a worthless check *prima facie* evidence of intent to defraud. Ten days are given in which to redeem a check before an arrest can be made. Agricultural credit corporations chartered by the State, in discounting notes, shall not exceed 2½ per cent, the rate established by the Federal Farm Loan Board for its banks. It is now a misdemeanor to make a false statement respecting one's financial condition in order to obtain credit over $50.

X. Regulation of Business

There are several other laws affecting business primarily. The non-par value law permits shares in stock to be issued by corporations other than bank and insurance companies without specifying the par value of the shares. Cotton exchanges and dealings in cotton futures when the contracts are regularly made, were legalized, but bucket shops were prohibited. Foreign corporations having no permit to do business in Texas, but holding stock in Texas corporations, may vote their stock just as any individual stockholder.

XI. County Administration

Counties with less than 25,000 population may unite in employing an auditor. Counties were given the right of eminent domain to acquire land for public building and public enterprises. Cities of less than 5,000 population were also given the right of eminent domain to acquire property for parks and other purposes. Cities and towns may now maintain municipal bands. The law authorizing cities of over 160,000 population to purchase waterworks systems removed any doubt as to the legality of bonds issued for this purpose by San Antonio. The Legislature validated charters and amendments to charters of cities of over 5,000 population adopted under the home rule act, which is of doubtful constitutionality. The establishment of new cemeteries in less than a mile of incorporated cities and towns of not less than 5,000 inhabitants was prohibited.

XII. Advertising

One of the laws dealing with the administration of State affairs and related matters not already mentioned provides that no newspaper shall charge for legal advertising of any character a higher rate than the lowest rate accorded classified advertisers. The charge for political advertising shall not be greater than that charged to classified advertisers

for a like class of advertising. Another law provides that money paid political party committees shall not be counted in the amount limited for campaign expenses. An enabling law carries out the constitutional amendment adopted in November, 1924, providing for an increased pension for Confederate veterans and their widows. The revisions of the civil, penal, and criminal procedure codes authorized by the preceding Legislature were submitted to the 1925 Legislature. A member of the Codifying Commission was retained to make certain corrections and to incorporate the 1925 laws. An appropriation was made to print 8,000 copies. A commissioner was provided to represent Texas in a conference with representatives of New Mexico, Colorado, and of the United States in the apportioning of the waters of the Rio Grande above Fort Quitman. The State was authorized to sell to the Federal Government the American Legion Memorial Hospital at Kerrville valued at about $1,750,000. The State rather than the county will hereafter bear the expense of tick eradication work. Liquors seized by the peace officers may be turned over to the Board of Control for use in the eleemosynary institutions upon order of court.

XIII. A Convict for Felony May Testify

Conviction for felony is no longer a complete bar to testifying in either civil or criminal cases; if the desired witness is in the penitentiary, his testimony in criminal cases for the defendant may be given by deposition. Two bills were passed prohibiting unreasonable searches and seizures. One requires a warrant to search the residence, actual place of habitation, place of business, person or personal possessions of any person, and no search warrant may issue without probable cause supported by oath and without describing the person or thing as near as may be. The other law prohibits testimony obtained by an officer in violation of constitutional or statutory law being admitted in evidence in a criminal case. Though probably aimed at prohibition officers the laws cover a very wide range.

XIV. General Character of the Last Legislature

From the galleries this Legislature seemed very tame compared with the prohibition and woman suffrage sessions. The only suggestions of fireworks incidental to hard fought measures were in connection with the amnesty bill and the prison investigation. The amnesty act was passed primarily to restore to former Governor James E. Ferguson his full political and civil rights. Space forbids a synopsis of the nineteen recommendations of the joint investigation committee of the prison system. Beginning with 1910 there have been thirteen legislative investigations of the penitentiary. The House committee which investigated the Highway Department made a favorable majority and an unfavorable minority report.

There were almost no bills passed by the 1925 Legislature of outstanding public interest. In the above summary an attempt has been made to list by groups the most important bills of general interest. Minor bills have sometimes been omitted from a group. Laws relating to fees, to procedure, to oil and gas leases, to water resources, to land, as well as to some other subjects have also been omitted. There are three miscellaneous laws to be mentioned. The first is of especial interest to women. When no administration is had upon the estate of a deceased husband, the surviving wife, after re-marriage, may renew valid existing debts of the community estate. The second makes twelve years the minimum sentence for burglary with explosives. The third relates to causes for survival of action. If the person liable die before suit is instituted in causes of action for personal injury and injuries resulting in death, his administrator or executor may likewise be held liable.

More bills and joint and concurrent resolutions were introduced in this session than in any regular session since 1917. The totals for the sessions are, 1917, 1,451; 1919, 1,192; 1921, 1,046; 1923, 1,247; 1925, 1,312. Out of these 1,312 bills and resolutions, four constitutional amendments

will be submitted and 208[1] general laws were passed, excluding bills vetoed but including a large number of laws that are local in application. Included in the 208 laws are all the appropriation measures. The 1925 Legislature made the best record in sixty-two years when it disposed of all the appropriation bills within sixty-six days. The last Legislature that made a better record was the Tenth Legislature in 1863, which disposed of its appropriations within a forty-five day period. There are decided advantages in an early passage of the appropriation bills; but their passage at the regular session during which members can draw only $2.00 a day after the first sixty days necessarily prevents the proper consideration by the Legislature as a whole of measures of general interest as well as the proper consideration by the Legislature as a whole of the appropriation measures themselves. The total amount appropriated from the general revenue is $37,397,142.18 for the next biennium, according to a statement prepared by Senator John Davis, Chairman of the Senate Finance Committee. This statement is given as printed in the Senate Journal, page 1,183. No statement has yet been prepared showing the exact amount of the Governor's vetoes.

STATEMENT OF APPROPRIATIONS

By John Davis, Chairman of Senate Finance Committee

Senate Bills:		
S. B. No. 1,	mileage and per diem	$ 125,000.00
S. B. No. 2,	contingent expenses	40,000.00
S. B. No. 5,	to pay livestock losses	165,000.00
S. B. No. 63,	rural aid, passed as House bill	3,000,000.00
S. B. No. 98,	pink boll worm	32,000.00
S. B. No. 101,	judiciary	3,349,844.00
S. B. No. 183,	departmental bill less highway and oil and gas and gas utilities, and less $2,450 re-itemization of Executive Department	5,327,703.80
S. B. No. 189,	for Eleventh Court of Civil Appeals	45,400.00
S. B. No. 214,	Board of Pardons, emergency	6,333.00

[1]Two general laws are said to be omitted from the printed *Session Laws*.

S. B. No. 236, penitentiary emergency	100,000.00
S. B. No. 251, eleemosynary	7,808,240.00
S. B. No. 264, deficiency bill, departments, etc	198,171.73
S. B. N. 265, deficiency bill, fees, etc.	323,353.02
S. B. No. 278, penitentiary loan	832,500.00
S. B. No. 382, publication of Revised Statutes	60,000.00
S. B. No. 393, educational bill	14,410,728.38
S. B. No. 406, emergency bill	737,346.18
S. B. No. 407, district courts	24,000.00
S. B. No. 410, supplemental for educational survey	2,000.00
S. B. No. 438, miscellaneous claims	388,322.07
S. B. No. 457, supplemental for Banking Dept.	10,000.00
S. B. No. 461, supplemental for Comptroller's Dept.	11,400.00
S. B. No. 462, supplemental for Engineering Dept.	6,000.00
S. B. No. 463, re-itemization of Executive Department, less $2,450.00.	
S. B. No. 466, supplemental per diem	10,000.00
S. B. No. 467, re-appropriating balance of $1,350,000.00 for purchase of University lands	119,000.00
House Bills:	
H. B. No. 303, penitentiary removal bill	200,000.00
H. B. No. 689, supplementing Ranger appropriation	22,250.00
H. B. No. 687, supplementary contingent expense bill	10,000.00
S. J. R. Nos. 3, 7, 9, 10, 18, and H. J. R. Nos. 5, 9 and — (Only four of these passed.—Author's note.)	35,000.00
Total appropriated from general revenue fund	$37,397,142.18

In addition to the veto of specific items in the appropriation bills, there were sixteen bills vetoed. Three of these were dictated by economy in fulfillment of the party pledge. The prison relocation bill passed in accordance with the recommendation of the Prison Survey Committee authorized by the Thirty-eighth Legislature was vetoed through lack of the wherewithal to finance the removal. The Governor expressed her sympathy with the bill and promised coöperation in removal when State finances permit. The bill authorizing commissioners' courts to employ nurses and providing an appropriation of public funds for this purpose was vetoed because this expenditure of public money is not a function of public government, as it is no more the duty of the State to furnish the individual a free nurse than a free doctor or lawyer. The Governor regarded this bill as

another attempt to put unnecessary officers on the expense of the taxpayers. The bill increasing the amount of money that commissioners' courts may appropriate for farm coöperative demonstration work was vetoed to prevent an increase of taxes at this time.

The House bill increasing the salaries of some of the assistant district attorneys in counties having a population in excess of 150,000 inhabitants was vetoed on account of the discriminatory character of a Senate amendment limiting to $4,000 the fees retained by district attorneys in counties having over 150,000 inhabitants and having no county attorney. The message points out that this provision is applicable only to the district attorneys of Tarrant, Dallas, Harris, and Bexar Counties and that it thereby discriminates against them in comparison with other officials retaining fees. The bill abolishing the office of the district attorney in the Seventy-seventh District on January 1, 1927, and providing that after that date the county attorney of each county of this district shall perform the duties of district attorney of said Seventy-seventh District Court within his respective county was passed to be vetoed for the reason that instead of abolishing one office the bill would have the effect of creating two. The message described a situation existing a short time ago in this district. The Seventh-seventh Judicial District, the Eighty-seventh Judicial District, and the county court were all three in session and all trying criminal cases. The message states that it is impossible for one county attorney to represent properly the State in these three courts at the same time.

The bill providing for coöperation between the State of Texas and the United States Department of Agriculture through the Livestock Sanitary Commission and the Agricultural and Mechanical College in the destruction of rodent pests, prairie dogs, rats, etc., was vetoed on the grounds of putting the Agricultural and Mechanical College and the Livestock Commission into a business that they had no business being in; tick inspectors and college professors would both be out of place in hunting for wild animals together.

The bill conferring on the directors of the Agricultural and Mechanical College the right of eminent domain was vetoed, as it made one certain individual surrender title to his land without his consent and as there did not appear to be any common public necessity involved. Free railroad passes for legislators and their families were vetoed. That the free pass is wrong in principle and that the acceptance of a pass is equivalent to the acceptance of money and, therefore, not good public policy are the reasons given. The bill providing the method of preparing Statements of Facts in all cases appealed or taken up on error for consideration by the appellate courts was vetoed because the length of the Statements of Facts and Bills of Exceptions which the court must read would be practically doubled and because the faults could be cured in an easier way. The bill authorizing any city, town, or village incorporated under the general laws and having a population of not more than 2,500 inhabitants to disannex a portion of territory was vetoed because its effect was purely local and because of the possibility of complications arising regarding city indebtedness and a consequent excess of litigation. The bill exempting Bowie County from a certain public road law was vetoed since no good reason for such exemption was given and on account of the possibility that such exemption might in some degree result in a disorganization of the present highway system. The amendment to the Moran Independent School District was vetoed upon the request of the senator and representative from the district. The bill exempting Travis County from one of the fish laws was vetoed owing to the small probability of the drainage of Lake Austin at any date in the near future. Three bills were vetoed because they were duplicates of others already approved.

THE ECONOMIC CONTENT OF EARLY MORMON DOCTRINE

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It has been the custom of practically all of the writers who have dealt with the subject to treat of Mormonism from standpoints either purely religious or purely historical. But Mormonism, neither its doctrine nor its history, can be understood thoroughly when approached from viewpoints so narrowly restricted. A large number of other factors—environmental, political, social, etc.—require study if the movement originating nearly one hundred years ago with Joseph Smith is to be properly appreciated. Not the least of these other phases which must be studied if Mormonism is to be understood is the economic. In fact, when that which is new, that which is different, in Mormonism is considered to the exclusion of its points of resemblance to other faiths, Mormonism is as much, if not more, an economic movement than it is a religious movement. It is this fact that justifies the appearance of such an article as this in the pages of this *Quarterly*.

That economic considerations form an important part in determining the character of Mormonism, and in shaping its history, is seen by an examination of the earliest of its doctrinal statements. These statements are to be found principally in the so-called revelations of Joseph Smith, on the basis of which is founded the Church of Jesus Christ of Latter Day Saints (the official name of the Mormon Church). In developing this paper we shall depend almost entirely upon these utterances of Joseph Smith, although occasional reference will be made to other statements of his, and of others, given in the main as opposition or elaboration of the original statements.

The extent to which economics has been a part of Mormon doctrine from its very inception is seen from the following

facts. All in all, Joseph Smith announced the reception of 112 revelations. Of the 112 there are eighty-eight that deal in whole or in part with matters that are economic in their nature. The third revelation received is the first one to definitely forecast the economic ideals of the movement, for it makes a specific reference to a "gathering." But even the statement of the first revelation that "the Lord shall come to recompense unto every man according to his work" has been used, not merely in the apparent and usual religious sense, but as expressing the proper view regarding the rewards of labor. During the two years prior to the formal organization of the church a total of eighteen revelations were received. Of this number twelve deal directly or indirectly with economic considerations. The one revelation announced on April 6, 1830, the day on which the church was organized, also gives expression to economic ideals in the statement "God will . . . cause the heavens to shake for your good", and in reference to the "cause of Zion." (As will be shown later Zion is as much an economic as a religious concept among the Mormons.) The 112 revelations given out by Smith total 9,614 printed lines.[1] By actual count 2,618 printed lines treat definitely and directly of economic matters. In addition to this there are many lines seemingly given over to doctrinal, social, or personal questions which are in reality so closely related to economic matters that they have been used to bolster up the economic teachings. Much of the remainder is given over to a mere restatement of the beliefs of creeds already in existence, such beliefs, for instance, as that of immersion, close communion, repentance, good works, etc. Hence it will be seen that Mormonism, though a religion, is largely, if not primarily, an economic movement, at least insofar as it offers to the world anything that is new.

It shall be the purpose of this paper to set forth the economic concepts of Mormon doctrine during the years of its formulation, that is, down to the death of Joseph Smith.

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[1] *Book of Doctrine and Covenants*, Lamoni, Iowa, 1911.

To that end we shall avoid, insofar as is possible, any consideration of the religious phases of the movement. Mormon writers may say that we are attempting the impossible, that the religious and economic elements of their faith cannot be separated. To a large extent this is probably true, for the two concepts are very closely interwoven. In the early days it must be that some of the converts objected to the mingling of the secular with the religious. At any rate within five months after the church was organized a revelation was announced which makes God say "all things unto me are spiritual, and not at any time have I given unto you a law which was temporal, neither any man—for my commandments are spiritual; they are not natural nor temporal, neither carnal nor sensual." By this statement the economic and the religious were bound firmly together so that that which was economic was also religious. The economic program of the church became an important part of its religious program. This being the case they held, and hold, to economic theories and policies which possibly they might never have embraced had not these theories and policies been regarded also as religious truths.

Nevertheless there is in Mormonism a very striking and easily discernible body of economic theory, and a very definitely outlined economic policy. In general this economic content of Mormonism as set forth in the teachings of its founder is encompassed by the following outline:

1. The existing economic system is wholly wrong.
2. The Saints should therefore abandon it.
3. God with their help will establish an ideal economic system, ideal both in theory and administration.
4. The nature of this ideal system is then set forth.
5. The part of the Saints in the establishment of the ideal is formulated.
6. The organization and administration of the new system is provided for.
7. The economic duties of the Saints to themselves, each other, and outsiders pending the establishment of the ideal are outlined.
8. Beginnings are made looking toward the establishment of the system.
9. It is today the dominating and controlling ideal of Mormonism.

Mormonism is a product of the frontier. To convince the frontiersman and his economic kinsmen, the small farmer and the laborer, that the prevailing economic and social situation and system are greatly at fault has never been a difficult task. The frontier has ever been the birthplace of proposed economic panaceas. Whether grangerism, populism, socialism, or Mormonism matters not—it is all the same. Each in its turn has been put forward as a cure-all for existing evils, the chief difference being that the establishment of the first three named has been sought through political channels, whereas the establishment of the economic ideals of Mormonism has been sought through the medium of religious organization.

The first plank in the economic platform of Mormonism is the same as that set forth as a basic premise by the best known of the political-economic movements. "We meet in the midst of a Nation brought to the verge of economic, social, political, and moral ruin. Corruption, greed and selfishness rule everywhere." So declared the Omaha platform of the Populists. "The people are in bondage. This is a crooked and perverse generation. My vineyard has become corrupted every whit. Every man walketh in his own way, whose substance is that of an idol. Greediness and lust for gain abound. There is none which doeth good save it be a few and they err in many instances—all having corrupt minds. These are the days of wickedness and vengeance. The world is a wilderness." Thus is God made to speak in the revelations to Joseph Smith.

Of course, the existing system, being a bad one, should be abandoned. The Populists made its rejection a political duty. The Mormons make its rejection a religious obligation. "Thou shalt lay aside the things of this world." "Save yourselves from this untoward generation." "Go ye out from among the wicked. Save yourselves." "Go to now, and flee the land." And having pronounced the existing system worthy of abandonment the Populists proposed the establishment of a system that would be ideal. The Mormons did exactly the same thing, although they regard

their scheme, not as one proposed, but as one promised. Revelation "shall deliver you out of the hands of your enemies." "God will cause the heavens to shake for your good." "There shall be a new earth." And it is the duty of man to help God to establish this new order. "Every man—go to with his might, with the labor of his hands, to prepare and accomplish the things which I have commanded."

That the new order is to be ideal is believed because it is to operate according to "the laws of God." Therefore with the Mormons their scheme is not only superior to the one now in operation, but is the one only true and correct rule for the economic order. Consequently they call it Zion. It is not, however, the far off future Zion of the usual religious concept. That concept they denominate New Jerusalem, but Zion is a present possibility, an economic and social condition which they claim to be working to establish.

Mormon revelations indict the prevailing economic system as wrong on the following grounds:

1. It allows inequalities to exist.
2. It divides society into classes, exalting the rich and debasing the poor.
3. It is characterized by class hatreds.
4. It permits the exploitation of one class by the other.
5. It allows a class of idlers to develop.
6. It does not provide for a just system of rewards of labor.
7. It does not make provision for the needs and just wants of all people.
8. It does not afford equality of opportunity to all alike.
9. It allows waste.
10. Those who have wealth are characterized by selfishness.
11. Those who have not wealth are envious, covetous, and inclined to disregard property rights.
12. It allows extremes of wealth and poverty.
13. Its laws are the laws of men and not of God.
14. Dishonesty exists, and its administration is characterized by graft and corruption.
15. By making it difficult for men to earn a living it binds them so closely to a consideration of the material phases of life that they neglect the development of the spiritual.
16. There is not an equitable nor a universal distribution of benefits.
17. Man and not God is the ruler of the system.

There are other charges brought against the system of today, but the foregoing are its principal shortcomings as outlined in the teachings of Joseph Smith.

These same revelations offer a plan for a new economic system, which the Mormons hold will not only avoid the evils enumerated, but will establish a new order, wholly just and righteous. Of course, since it is God's plan it is to be participated in by God's children only. Therefore the first essential required of those who would enter this economic "city of refuge" is that they become Mormons. Having done so they become partakers of the promise that they shall have part in setting up and enjoying the new order, to which the religious name of Zion is given. Moreover, it is not a vague dream to them, but a very definite system, occupying a very definite location, and centering in the city of Independence, Missouri. Such other colonies as the Mormons have, or may set up, even though operating upon the basis of the new plan, are to be regarded merely as training schools, places of preparation, or stones in the foundation of the new order. All expect Independence to be its ultimate capital, both religious and economic.

The economic theory upon which Mormonism would build its ideal system follows. Ownership of all capital goods is vested in God. "All flesh is mine—the riches of the earth are mine to give." Man possesses property only in the managerial capacity of trustee or steward. God, the owner, intends that all his children should share alike in the benefits of production, that there should be an equality of opportunity for all, and that each man is entitled to enough of this world's goods to satisfy his needs and his just wants. Such therefore should be his minimum and also his maximum wage. Class strife is unnecessary for it was never intended that classes should exist. Poverty is unnecessary and therefore a sin. So also with great wealth. Labor, the investment of capital, business enterprise, and all economic activity are matters of group concern, and therefore should be carried on under group direction. For the same

reason the distribution of economic rewards should be directed by the group. The group acts through the medium of an administrative force set up by divine revelation, the appointments of Divinity being subject to ratification, however, by human members of the group. A realization of these ideals would liberate the individual from the pressure of economic necessity sufficiently to allow him to attend to the fuller development of his mental and spiritual nature. It would put into force the second great commandment that we should "love our neighbors as ourselves."

This theory sounds idealistic and impracticable. It reminds us of communism, and the failures of the communistic societies of the last century. It seems to discourage individual initiative, and to put a premium on idleness and inefficiency. Joseph Smith's "he that is idle shall not eat the bread nor wear the garments of the laborer" reminds us of the decree issued in early Virginia that "he who does not work shall not eat." But the Mormons claim that the system provided in their revelations is such that it avoids the rocks on which these other plans went to pieces. They say it is not centered in communism, but in individual accountability which they call stewardship.

Just what is their plan? Perhaps we can better understand it by assuming it to be in full and complete operation, and then by means of hypothetical cases follow its operations. Let it be understood, however, that we are concerned here only with the plan as outlined by Joseph Smith. We shall not consider any modifications of it that may have been made since his death.

To begin with—suppose that John Jones, a Texas farmer, is converted to Mormonism. It is now his duty to appear before the bishop of his district, or ward, and in recognition of the fact that God, and not he, is the real owner of all that is in his possession, make out a "testimony" (an inventory) of his financial standing. This "testimony" may be compared to a Federal income tax return. We shall suppose this "testimony" to read as follows:

TESTIMONY
of
John Jones, Texas

Assets		Liabilities	
100 acres @ $100	$10,000		
Farm buildings	2,000	Accounts	$ 400
Furniture	500	Note	600
Clothing	200		
Stock	1,300		
Cash	1,000		
Cotton, unsold	1,000		
Total	$16,000		
Deduct liabilities	1,000		
Total			$1,000
Present worth	$15,000		

Since God is the real owner John Jones must pay to God a tithe of one-tenth, or $1,500. This the bishop takes and forwards to church headquarters. The presiding bishop credits it to a fund used for the promotion of the spiritual activities of the church. John Jones, therefore, retains legal deed to $13,500 worth of property. The church does not take over the deed, nor does he hold it in common with the other members. Therefore, Mormonism is not communism. He does, however, admit that God is the real owner, and he merely the steward, or manager.

The "revelations" also teach him that he is entitled only to enough property to supply his needs and just wants. These needs and just wants include his personal needs and wants, those of his family, and those demanded by an efficient management and a legitimate expansion of his business, or farming activities. He is entitled to no more than that. In other words, he is not to accumulate a surplus, nor to lay up riches to "canker his soul." Therefore, he must next determine how much of the $13,500 left him after he has paid his tithe will be required to supply his immediate needs and just wants. He communicates his decision to the bishop and his two counselors. If in their judgment his wants are reasonable they agree. If he and they are

unable to agree as to the amount he is to keep for himself the matter is taken to a church court. The decision of the court must be respected, or both he and the bishop will find themselves under the "condemnation of the unfaithful steward." Suppose it is finally agreed that $11,000 will supply the needs and just wants of Farmer Jones. He actually possesses, however, $13,500. Therefore he has $2,500 in the form of a surplus, which he must turn over to the church. He, therefore, either deeds $2,500 worth of his property to the church, or else converts that much of his holdings into cash and turns the money thus realized over to the bishop as the agent of the church. The surplus thus paid becomes part of a fund for the advancement of the economic program of the church. It is under the control of the presiding bishop, and the act of turning it over to him is known as a "consecration." He will use it to help bring about economic equality among the members of the group, for "the poor shall be exalted, in that the rich are made low." The material goods now remaining in the possession of John Jones constitute what is known as his "inheritance," given him of God, and his right to control it is his "stewardship." It is up to him to be as good a manager as possible for he must account for his stewardship annually.

Let us follow him as he makes his second report. All others will be like it. The first alone is different. He reports a total expense for the year of $2,500, and total receipts of $3,600. During the year his net worth has increased $1,100. (We are assuming that property valuations did not change. The only effect such a change would have would be to change the net worth.) On a gain of $1,100 he will pay a tithe of $110, leaving $990. Perhaps Farmer Jones feels that because of a new baby, or a son ready to enter college, or the need for a new barn, he should add $700 to his stewardship. If the bishop agrees then our farmer may keep $700 of the $990. This leaves a surplus of $290 which he is to consecrate to the church. Such consecration is receipted for by the bishop. Any man so desiring may make an offering to the church in addition to the tithe and surplus, but such is not required.

Heretofore we have been dealing with the "leveling down" scheme of the Mormon economic plan. But not only are the rich to be "made low"; the "poor are to be exalted," and to the extent to which the rich are "made low," that "all may be as one" with "no poor among them." We have seen how by the transfer of the "surplus" to the bishop the rich (those with property) are to be kept from making accumulations beyond the amount of their needs and just wants. We shall now see what is to be done with the surplus thus consecrated. We shall see how this Mormon plan, as outlined in the accepted revelations of Mormonism, would eliminate poverty and bring about economic equality and equality of opportunity. In other words, we shall learn that the plan provides for a "leveling up" process which must be taken into account.

It is provided that all consecrations (tithes, surplus, and offerings) shall be kept in store by the bishop, to be distributed by him as occasion may demand. It is to be used by him in aiding the poor, in building up the church, in supporting the families of the ministry, in aiding the widows and orphans, in aiding the sick, in advancing the cause of education, in purchasing lands for the public benefit of the church, in giving assistance to private enterprises, in giving the youth of the church a start in life, in creating new stewardships—in short, in establishing Zion on earth as a step preparatory to the coming of the New Jerusalem.

Let us take a few hypothetical cases. Mrs. A——— is a widow who is unable to earn enough to support herself and children. She may draw on the bishop, who will investigate the merits of her case and administer funds to her in accordance with her needs and just wants. So also with Mr. B——— who is sick, and with Mr. C——— who is too old and feeble to work. But Robert D——— is a young convert in the best of health. He is too poor to establish himself as a farmer. The church will not give him a farm, for the reason that the revelations declare that until the Lord comes again, all men, even the Saints, must pay for what they get. Knowing this Robert D——— may apply

to the bishop for a "stewardship" over an "inheritance." If, after investigation, the bishop and his counselors find Robert D——— to be sound morally and spiritually, if they find him to be sufficiently capable and industrious—in other words, if they find him to be a good risk "the treasurer shall give unto him the sum which he requires, to help him in his stewardship." The same would be true in the case of a young man desiring to establish a business. Aid would also be given to a man already having a stewardship, but who desires to develop it further in order to increase its profitableness. When the sum paid from the treasury of the church has been repaid through the medium of "consecrated surplus" payments, the church gives a deed in fee simple to the one aided. He continues consecrating his surplus. Thus principal and interest are cared for, and the bishop is in charge of a self-perpetuating fund, the purpose of which is the ultimate total elimination of inequalities. One more illustration: Fred E——— may desire to practice law. He lacks the funds to pay for his education. The church will aid him as it did the others, except that in his case the "inheritance" he receives is not spoken of as a material inheritance. "All children," reads one of the revelations, "have claim upon the church; or, in other words, upon the Lord's storehouse, if their parents have not wherewith to give them an inheritance." Thus does this Mormon plan propose to set up an order in which there shall be equality of opportunity, and an elimination of extremes of wealth and poverty. Realizing that such a scheme cannot be put into effect in a day a society known as the Order of Enoch is provided for, the purpose thereof being to work for the establishment of Zionic conditions, and pending the accomplishment of the ideal to serve as an agency of philanthropy in ameliorating the conditions of the less favored classes.

It will be noted that the proposed system which the Mormons preach rewards efficiency and individual enterprise through the medium of increased stewardships which carry with them increased responsibility. The inefficient are regarded as unprofitable stewards and are not so rewarded.

They are borne with patiently, however, their needs being cared for in the form of charity disbursed from the bishop's storehouse. By thus providing for rewards for efficiency the Mormons claim this plan of theirs avoids the fatal effects of the communistic failures of the past. Instead of providing for the ownership of all things in common, it provides for individual accountability to a common owner, God, who deals with the individual through a common administrative agency, the church. Through an adoption of this scheme it is claimed that the problems of distribution and economic rewards will be solved. Though many other declarations of an economic character are made in the writings of Joseph Smith, it is this plan that forms the core of his economic policies. To outsiders it would appear that the Mormons have evolved an extreme system of income taxation by the church, the revenue from which they would use in establishing church farm loans, church rural credits, church home aid associations, church student loan funds, mothers' pensions, and old age pensions, as well as a general scheme for church social and industrial insurance.

All through their history the Mormons have made efforts to put this plan into operation. They tried it in a way at Kirtland, Ohio, and again at Independence, Mo., and still again at Nauvoo, Ill. To an extent they have tried it in the past, and are still trying it in Utah. The reorganized faction with headquarters at Independence is even now making ready to establish it in its entirety. These attempts in the past explain in large part the changing currents of Mormon history. All factions of Mormons believe in this plan. All preach it. All look upon Independence as the divinely appointed central place of the new ideal order. This fact will give color to their future history. In fact, it is their social and economic ideal, and not polygamy, not baptism for the dead, not the laying on of hands, that is today, and always has been, the dominating and controlling doctrine of Mormonism. Of that which is different in their

religion it is secondary only to a belief in direct revelation, and even most of the revelations received deal with "the establishment of Zion."

Such then is the economic content of early Mormon doctrine. It would make an interesting study no doubt to record the modifications made in the plan since the death of its originator. It would also be of interest to determine to what extent the various factions of Mormonism attempt a positive adherence to it. It would be especially interesting to show how the history of the Mormons has been affected by their belief in this plan. These things are not, however, within the province of this paper. They must be left to subsequent investigations. We have tried merely to set forth the fact and character of the economic teachings of Joseph Smith.

ARKANSAS LEGISLATION, 1925

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TAXATION

A State Income Tax Constitutional.—In the case of *Sims, State Comptroller,* v. *Ahrens,* January, 1925, the Supreme Court of Arkansas by a unanimous decision held that the gross income tax law passed by the general assembly in 1923 violated *Article 15, Section 5* of the State Constitution. Three of the five judges also held that any type of state income tax, gross or net, would be unconstitutional, as such a tax would be an occupation tax levied for state purposes, which was prohibited by the State Constitution. The remaining two justices dissented from the majority ruling that any type of income tax was unconstitutional.

On a motion for a rehearing made by the Attorney General one of the three majority justices joined with the two dissenting justices in the original hearing and in a modifying opinion these three held on May 4, 1925, that a properly drawn state net income tax would be constitutional. These three justices held that there were only two limitations in the State Constitution on the power of the state to tax, namely, that all property taxes must be equal and uniform throughout the state and that no state tax can be levied on occupations that are of common right. This majority further held that a net income tax was not an occupation tax even though the income might be derived from occupations. The net income tax was classed by the court as an excise tax. This decision did not affect the prior adverse ruling on the gross income tax law of 1923.

PUBLIC LAW

Judicial Power over Political Questions.—A bill for an injunction was filed in the First Chancery District Court by a taxpayer against the State Auditor and the State Treasurer, to prevent the issuing of state warrants or the honoring of them, after the general assembly of 1925 had appointed a hold-over committee consisting of seventeen senaators and seventeen representatives and fifty-eight clerical helpers, including the journal clerk, the enrolling clerk, the engrossing clerks, and the secretaries of the two houses. The duty of this committee was the completion of the records of the general assembly. The rate of

pay of the senators and representatives was $6 a day plus $1 a day additional for stamp money.

The complainant based his request for an injunction partly on *Amendment Eight* which provided that members of the general assembly should receive no compensation, prerequisite or allowance other than that provided by the Constitution. The constitutional provision in question prescribed pay of $6 a day for the first sixty days of the regular session and no pay if the regular session continued for a longer period. If there were to be special session the rate of pay was fixed at $3 a day for the first fifteen days and no further pay after that period. Mileage at the rate of 10 cents per mile was allowed for both regular and special sessions.

By a vote of 3 to 2 the Supreme Court in the case of *Russell, Taxpayer,* v. *Cone, State Auditor,* May, 1925, affirmed the decree of the chancery court, and decided that the general assembly had the power to appoint a committee to serve after the expiration of the legislative session in order to complete its records. The majority held that the question of the number of members and employes appointed on the committee by the general assembly was a political question to be decided by the Legislature in the passage of the bill and by the Governor in approving its passage, and that the size of the committee was not a question subject to judicial review. The majority expressed a belief that the number of the committee members and employes appointed by the general assembly was excessive. The majority further held that the compensation for services rendered after the general assembly had adjourned was not controlled by *Amendment Eight,* and since the Constitution did not prescribe a rate of pay for such services to the state the general assembly might fix the rate of pay at such a sum as it saw fit.

The minority of the court stated, however, that the power to appoint a hold-over committee carried with it the power to appoint only a reasonable number on the committee and at a reasonable rate of compensation and that the proper exercise of this power was subject to judicial review. The minority stated further that the general assembly had in this instance exceeded its power by naming an unnecessarily large number of legislators and clerical helpers on the committee and therefore it had abused its power.

Administration

Executive Power of Removal.—The power of the state executive to remove summarily members of the board of trustees of a state educational institution arose in connection with the operation of the Monticello District Agricultural and Mechanical College. Complaints having been made by citizens against the president of the institution, a legislative committee having made an investigation, a mass meeting

having protested against the administration of the institution, the board of trustees decided to reorganize the management of the institution by electing a new president from among the faculty members. In a public statement the board praised the excellent work of the outgoing president, cleared him of all charges of mismanagement, gave him a vote of confidence and stated that the change was made solely in the interest of restoring harmony in the institution.

The Governor was not pleased with the plan of reorganization and shortly after this reorganization was effected by the board he asked that the members of the board resign. Of the five members, one member who had not taken part in the reorganization resigned, the term of one member had expired previously and he was serving until his successor was appointed, but the other three members refused to resign.

Crawford and Moses, Digest of the Statutes of Arkansas, 1921, Sec. 9605, provided that the trustees shall be appointed by the Governor with the concurrence of the Senate, and shall hold office for ten years or until their successors are appointed and that the Governor shall have power to remove any trustee for good cause shown.

Therefore when the three members refused to resign the Governor issued a proclamation stating that there were complaints of unsatisfactory condition in the institution and these conditions were brought about by the inefficiency, incompetency, and inattention of the board of trustees. The proclamation further stated that these complaints being true they constituted good cause for the removal of the three members of the board. The removal of the three board members was then ordered and their successors appointed.

The newly appointed members proceeded to meet but were served with an order of a temporary injunction granted by Chancellor E. G. Hammock of the Second Chancery District Court secured by petition of the three members of the old board who refused to resign. The temporary injunction prohibited the new board from executing official acts of any kind. At a hearing on June 10 the chancellor, on making the temporary injunction permanent, ruled that the Governor must prefer specific charges against the board members and give them a formal hearing. The Supreme Court probably will not be able to pass on the question until after the summer recess is over.

The power of the Governor to make a recess appointment was also raised at the hearing for the granting of the injunction. The member of the board whose term had expired joined with the three petitioners who refused to resign and raised the issues as to whether the Governor could appoint a member of the board after the adjournment of the State Senate, its concurrence being necessary by statute. The chancellor ruled that such recess appointment was within the power of the Governor. On this ruling an appeal was taken by the petitioners to the Supreme Court.

Cooperative Marketing Associations

Contracts for Future Delivery.—In 1921 the general assembly enacted a statute authorizing the organization of associations for the purpose of promoting the coöperative marketing of farm products. In the case of *Brown* v. *Arkansas Cotton Growers' Coöperative Association*, 270 S. W. 946, April, 1925, the plaintiff, who was a member of the association organized under this act, asked for $4,949 in damages for the selling by the association of his cotton at less than the market price and also prayed for a cancellation of his contract with the marketing association as it had adopted an illegal plan for selling its cotton. In a cross complaint the association asked that the plaintiff be enjoined from disposing of his remaining bales of cotton and also be required to specifically perform his contract by delivering it to the association.

The court of the First Chancery District found against the plaintiff on his claim for damages and also refused his request for the cancellation of the contract. That court also denied relief to the association and on this portion of the decree an appeal was taken by the defendant association. The Supreme Court reversed the portion of the decree which denied the relief sought by the association.

The Supreme Court in a decision which embodied a lengthy economic analysis held that the marketing association in contracting with purchasers of cotton for future delivery was not involved in a gambling transaction. The court distinguished the legitimate business practice of contracts for future delivery from the practice of "dealing in futures." The latter scheme was defined as an illegal agreement based merely on the future advance and decline in the price of a commodity unaccompanied by any intention on the part of the seller to deliver the commodity sold or the buyer to receive it.